Despite the Law:
Union Organizing in Contemporary America

by

Dorothee Elisabeth Benz

A dissertation submitted to the Graduate Faculty in Political Science
in partial fulfillment of the requirements for the degree of
Doctor of Philosophy, the City University of New York

2004

This manuscript has been read and accepted for the Graduate Faculty in Political Science in satisfaction of the dissertation requirement for the degree of Doctor of Philosophy.

April 5, 2004
Date

Frances Fox Piven
Prof. Frances Fox Piven, chair of examining committee

April 13, 2004
Date

Prof. Ruth O'Brien, executive officer

Prof. Marshall Berman

Prof. John Bowman

Prof. Joshua Freeman

Prof. John Mollenkopf

Supervisory committee

CITY UNIVERSITYOF NEW YORK GRADUATE SCHOOL

ABSTRACT

Despite the Law: Union Organizing in Contemporary America

by Dorothee Elisabeth Benz

Advisor: Frances Fox Piven

This dissertation analyzes the evolution and success of contemporary labor organizing strategies as they develop in response to the inadequacy of current labor law to protect the right to organize. The framing argument is that it is the unique role of the American state that has given U.S. labor relations their distinctive shape. State influence on labor strategies and success is both direct, by circumscribing what means unions can use in their efforts to organize workers and limiting their arsenal of tactics; and indirect, by shaping employer behavior and strategies, which in turn bear on union strategies and outcomes. The understanding of how these variables interact is grounded in a theory of power that conceptualizes power as inhering in the contributions that social actors make in interdependent relationships. Innovative strategies being pursued by the labor movement today grow out of the recognition that workers' relationship with the state is, at best, of no help in winning union recognition, and are generally characterized by an effort to draw into the union-employer relationship other relationships in order to leverage the interdependencies of the third party to the union's advantage; among those third parties, other state actors have emerged particularly critical. Unions are trying to gain leverage through a complex of legislative, electoral, regulatory and other strategies. The state was in

the past and remains today the most important third party in determining the outcome of the struggle between employers and workers. The precise unfolding of these relationships is explored through case studies of three high-profile cutting-edge industrial organizing campaigns: SEIU Local 1199FL, HERE Local 226 and CWA Local 37083.

Acknowledgments

Writing this dissertation has given me a keen appreciation of the invaluable role that an intellectual community plays in the development of one's ideas. I owe an enormous debt of gratitude first and foremost to Frances Fox Piven, my advisor and sponsor of the dissertation. In addition to being a brilliant scholar, conscientious teacher and insightful critic, Frances served as a constant sounding board in the evolution of the ideas committed to paper here. Our discussions of labor power and labor strategy go back years, and it's impossible for me to imagine having developed my arguments without her.

Joshua Freeman, the reader on this dissertation, provided tremendously helpful detailed comments on the drafts of every chapter. Like Frances, he helped shape the project with his questions and suggestions before a single word was written, and like her, he read every single word that was written in manuscript form. I am grateful as well to the rest of the supervisory committee— Marshall Berman, John Bowman, and John Mollenkopf— each of whom has been supportive of my scholarly development before and during the writing of the dissertation, and each of whom provided illuminating comments on the dissertation. Through the years, I have benefited from the classroom teaching and personal advice of many other faculty at the CUNY Graduate Center. I have also benefited from the intellectual and personal support of fellow students, most notably from the sustaining energy of the group of women known as WKWA: Jocelyn Boryczka, Jennifer Disney, Ronni Greenwood, Susanna Jones, Effie MacLachlan, Tracy Steffy and Dorinda Tetens.

I am grateful to the union leaders, staff and members who talked to me on and off the record, helped me locate documents and generously took time from their busy schedules to meet with me and answer my questions. This project would have been impossible without their cooperation and the access they gave me to their files and their thinking alike.

I owe a special debt to my employer, CWA Local 1180, which graciously allowed me to take a six-month leave of absence to do the actual writing. I have no idea how I would have finished the dissertation without the luxury of 12-hour days free from the constant interruption of my pager going off. I am particularly grateful to Bill Henning, whom I'm honored to call a friend as well as a colleague, for his support in and out of the office.

My dear friends Vicky Williams and Glenn Williams provided, quite literally, a place for me to write the second half of the dissertation. After a fire destroyed my home in September 2003, I showed up on their doorstep in the middle of the night in my bathrobe with my laptop and my dog Thurgood. They took us in, helped me schlepp boxes and boxes of dissertation files (which mercifully were not destroyed) from my apartment and into their house, and let us stay until the dissertation was done. I have never met two more generous people.

Jocelyn Boryczka has been my most steadfast support throughout the writing of the dissertation. Our daily e-mail exchanges became an almost sacred ritual while we were both writing dissertations, providing a place to share triumphs and setbacks alike, to announce

goals for the day and report on progress made, and to find encouragement. The deepening of our friendship is the single greatest gift of this dissertation.

I want to thank my family, both born and chosen. My parents, Beate Benz and Wolfgang Benz, blazed the way with examples of hard work, discipline and their own PhDs, and provided crucial material support. Elizabeth Lorde-Rollins has been my best friend for 20 years, and I'm grateful for the faith she's always had in me. I'm grateful, too, for the constant companionship of Thurgood, who loved me just the same on the days I wrote nothing as on the days I wrote 2,000 words. His insistence that going to the park was more important than sitting at the computer helped me maintain a modicum of perspective on life.

Table of contents

CHAPTER 1

Introduction

I. Introduction: The handwriting on the wall

In the summer of 1946, the Congress of Industrial Organizations (CIO) came to Kannapolis, NC to organize the Cannon Mills. "Uncle Charlie" Cannon employed some 24,000 workers, and Kannapolis was the biggest mill town in the country.[1] The CIO had come to organize the textile giant as part of its post-war Operation Dixie effort to organize the South. The campaign at Kannapolis failed miserably, and in the end Operation Dixie itself was a defeat for the labor movement. The workers at Cannon praised Uncle Charlie for taking care of them, but the paternalism evident in such comments was equally evident in the fear that his total control of the town inspired. Cannon owned not only the mills, but the streets, the houses, the grocery stores. The town's arrest records were kept in triplicate, "one copy for Cannon Mills, a second for the newspaper files, and a third retained by the sheriff's office," reported historian Barbara Griffith.[2] Little wonder that no more than a few workers signed union cards.

Sporadic efforts to organize Cannon continued throughout the 50s and 60s. In 1974, the union had finally gained enough support to file for a National Labor Relations Board (NLRB) election, but the company still owned the town and the union lost the election. In

[1] Barbara Griffith, *The Crisis of American Labor: Operation Dixie and the Defeat of the CIO* (Philadelphia: Temple University Press, 1988), 47.

1982, Kannapolis was incorporated as a town, bringing to an end the days of the mill town, though not an end to the company's opposition to the union. The union lost an election in 1985 and again in 1991. The company, now owned by Fieldcrest, illegally fired and intimidated workers during the 1991 election, so the NLRB ordered a re-run of that election in 1997. The union lost again, but again the company broke the law and a new election was ordered. In 1999, the union finally won; 2,270 workers voted for the union, 2,102 against.[3] The workforce of tens of thousands had long since been reduced to 5,000 through technological developments and, more critically, the contraction of the industry amidst increasingly globalized production. The company was now owned by Pillowtex, and the union, too, was in its third incarnation— from the original Textile Workers Union of America (TWUA) to the Amalgamated Clothing and Textile Workers Union (ACTWU) to the Union of Needletrades, Industrial and Textile Employees (UNITE)— so long had the struggle to bring the union to Kannapolis been.

It was the biggest union victory ever in a southern textile mill, a truly historic triumph that many people had literally worked their whole lives to achieve. "When I first went to work, I was afraid," said Cynthia Hanes, a Cannon worker and union activist, in 2000. "I can remember a time when you didn't say the word union, not in the South. We've had people die during this campaign. My husband died. He never lived to see us win. He's the one that made me wear my union badge for the first time. I went to work with that badge, and I was scared to death. They didn't say nothing, and after that, they couldn't control me no more," she added with a grin.[4] It is people like Cynthia Hanes that have built

---

[2] Ibid., 60.
[3] Carrie Kim, "Victory is Ours!" *UNITE! Magazine* (summer 1999).
[4] Dorothee Benz, "The Battle's Just Begun," *UNITE! Magazine* (summer 2000).

the American labor movement and that have always given it a character of dignity, courage and determination, despite its many other shortcomings.

But it is getting harder and harder each year for the Cynthia Haneses of America to win and keep their unions. Almost as soon as the union had finally won at Cannon, new troubles loomed on the horizon. In 2000, the company filed for bankruptcy protection. With the help of the union and active lobbying by union members, it emerged from bankruptcy in 2002. It was a short-lived reprieve, however. In July 2003, Pillowtex once again sought chapter 11 protection, and this time shuttered its doors at all 16 of its facilities in 10 states; 6,450 workers lost their jobs, including 4,000 in Kannapolis, which was devastated by the closing.[5] It was one of an endless string of plant closings that have affected the textile industry as well as manufacturing in general, slashing organized labor's ranks by thousands every year as its traditional stronghold continues to crumble.

In the meantime, the growth areas of the U.S. economy are in sectors that are overwhelmingly non-union, and union efforts to break into "new economy" industries are met with very "old economy" tactics by employers. An organizing effort in 2000 at Amazon.com, one of the flagship companies in the information technology (IT) sector, drew stiff employer resistance, and in early 2001, the company closed the Seattle call center where workers had been gathering union cards to file for an NLRB election. The union drive was defeated; the work was outsourced to India.[6] Indeed, the current trend in the IT industry of moving work offshore puts workers in the "new economy" in the same bind that manufacturing workers have been in for decades: any effort to improve their conditions is met with the reminder, sometimes explicit, always implicit, that their jobs can be done for far

[5] "Statement by UNITE President Bruce Raynor on Pillowtex Chapter 11 filing," press release, July 30, 2003; Bruce Raynor, "Protect Workers' Rights," *Washington Post* (September 1, 2003); Michael Barbaro, "A North Carolina Town, Unraveled," *Washington Post* (August 9, 2003).

less in other countries. The negative effect this has on unions' efforts to organize has been documented in the case of the manufacturing sector; there is no reason to believe that workers in IT companies would react any differently than their blue-collar brethren to these structural obstacles.[7]

Organizing new members has thus become an urgent necessity for survival for labor at the same time that it has become harder than ever. Shifts in the U.S. economy have accelerated the decline in union density; industries with higher density have lost jobs while the vast bulk of new jobs are in industries where unions have few roots. Over 300,000 new members must be added to labor's ranks every year just to keep the rate of union density steady.[8] The two biggest sectors of the economy, retail trade and services, have among the lowest union density rates, 5.2% and 3%, respectively.[9] Employer resistance to union organizing, meanwhile, has grown, and employers' hands are strengthened as labor's numbers dwindle. Added to this already difficult organizing terrain is the wholesale inadequacy of the law to protect workers' right to organize. The dual obstacles of employer hostility and weak labor laws, combined with the trends of economic development away from industries with labor strength, are the primary factors explaining labor's decline in the last three decades. American unions are particularly vulnerable to all three of these

---

[6] See chapter 5 for a more detailed discussion of the Amazon campaign.

[7] A 2000 study by Kate Bronfenbrenner found that 51% of companies threaten to close if the union wins; 68% of employers in mobile industries (such as manufacturing or communications) make such threats. While plant closings are very real phenomena—hence the power of such threats by employers seeking to defeat unions—the study showed that the *threat* of closure was unrelated to a company's financial health. Less than 3% of companies actually shut down after a union victory. The effect on workers seeking to organize, however, was substantial and helps explain the lack of correlation between plant closures and threats of closures. The NLRB win rate at facilities faced with plant closing threats was 38%, compared to an overall win rate or 51%. *Uneasy Terrain: The Impact of Capital Mobility on Workers, Wages, and Unions* (submitted to the U.S. Trade Deficit Review Commission, September 6, 2000), v-vii.

[8] Kate Bronfenbrenner, Sheldon Friedman, Richard Hurd, Rudolph Oswald and Ronald Seeber, *Organizing to Win.* (Ithaca: ILR Press, 1998), 3.

[9] Stephen Lerner, "An Immodest Proposal: A New Architecture for the House of Labor," *New Labor Forum* (volume 12, issue 2, summer 2003), 11-12.

developments because unionization in the U.S. occurs on a shop-by-shop basis; unions have to fight employer opposition under adverse legal circumstances in every individual shop, a circumstance that makes organizing on scale difficult, and even more difficult because every unionized business that closes represents that many more workers that need to be organized just to maintain the same number of union members. All this is reflected in the steady erosion of union density over the last three decades. For over two decades union density has declined every year except one (where it held steady); in 2003, it stood at 12.9%, and an even more perilous 8.2% in the private sector.[10]

In the 1990s and early 21st century the labor movement has responded to this crisis with ever louder calls for more organizing, for more resources for organizing and more innovation in organizing strategies. A belief in the urgent need for unions to prioritize organizing was one of the driving forces behind the New Voice challenge to the old-guard leadership of the American Federation of Labor-Congress of Industrial Organizations (AFL-CIO) in 1995. In the first contested election in the federation's history, the challengers, led by Service Employees' International Union's (SEIU's) John Sweeney, won, and it has been a hallmark of the Sweeney administration to support new organizing efforts both rhetorically and organizationally. The federation has no direct authority over its affiliates, but it sought to offer expertise and strategic planning to individual unions, it encouraged unions to shift resources to organizing, and it started or expanded several organizing-related programs and departments. Since then several major U.S. unions have emerged as the leaders in the labor movement's push for new members, increasing their resources for organizing, restructuring their organizations to prioritize organizing and exploring new and effective ways to succeed in a hostile climate. Most notable among the "organizing unions" are SEIU, the Hotel

[10] Bureau of Labor Statistics, "Union members in 2003,"

Employees and Restaurant Employees International Union (HERE), UNITE, the Communications Workers of America (CWA), the American Federation of State, County and Municipal Employees (AFSCME), and the American Federation of Teachers (AFT). In January 2003, organizers and leaders from these and other unions came together at an AFL-CIO-sponsored "organizing summit" to compare experiences and coordinate strategies. It was the first national organizing meeting in 50 years.[11] Also in 2003, a group of five unions raised a new challenge to the AFL-CIO. Called the New Unity Partnership (NUP), they have called for greater resources for organizing and above all greater centralization of organizing efforts.[12] Like the New Voice before them, the NUP insurgents are responding to the handwriting on the wall: unless some way is found to reverse the losses, organized labor's days as a meaningful force in American life are numbered.

Thus the rather grim slogan "organize or die" can be heard more and more in union halls and offices these days. There are many factors that have contributed to this gloomy state of affairs for labor, but among them the role of the state is central. One cannot understand either the predicament labor finds itself in or its strategies and responses to this predicament without examining the role that the state, and in particular federal labor law, has played in shaping labor relations. It is that role that is the subject of this dissertation. More precisely, the study at hand looks at contemporary labor organizing strategies as they have developed in response to the current legal and political climate. The starting point for unions

---

http://www.bls.gov/news.release/pdf/union2.pdf (viewed January 30, 2004).

[11] The AFL-CIO National Organizing Summit, "Report to the Executive Council of the AFL-CIO" (February 2003), 1.

[12] The New Unity Partnership (NUP) unions are SEIU, HERE, UNITE, the Laborers' International Union of North America (LIUNA) and the United Brotherhood of Carpenters (UBC). Discussion within the labor movement of their ideas began around a series of public documents authored by SEIU strategist Stephen Lerner. The NUP's blueprint for reorganizing and revitalizing the labor movement, meanwhile, is not public, but has been "outed" by Carpenters for a Democratic Union; it is available on their website at http://www.ranknfile.net/nup.htm. This "gang of five" has

seeking to organize is the harsh reality that the law in its current form is, at best, no help in organizing. On this point, there is widespread agreement in both labor and academic circles. Yet the prospects for labor law reform are bleak to non-existent without a substantial increase in labor's political power. Reform legislation (the Employee Free Choice Act, H.R. 3619 and S. 1925) was introduced in Congress in November 2003, but faces a steep uphill battle. Real reform seems unlikely as long as union density continues to slide, even as reversing the slide in density seems increasingly unlikely without a change in the law. It is this vicious circle that led Sweeney and the New Voice slate to declare, "We must first organize despite the law if we are ever going to organize with the law" during their 1995 campaign.[13] Many unionists have taken that admonition to heart, and innovative organizing strategies being pioneered today are driven by the sober realization that the state is no help in winning union rights. These strategies are characterized by a conscious search to compensate for the dual obstacles of hostile employers and inadequate legal protection.

Underlying the strategic questions raised by the challenge of organizing "despite the law" is a more fundamental question about power: How can workers gain enough power to force employers to do things they are dead set against, i.e., give up unilateral control of the workplace, negotiate with their workers, and sacrifice a slice of their profits? Any analysis of the state of labor organizing must thus be rooted in an understanding of relations of power, and in particular, of the shifting dynamics of class power. The research presented here is thus explicitly located within a discussion of theories of power, and in particular, in an analysis of how power is realized in interdependent relationships.

---

generated controversy within labor and spawned a number of written critiques and counter-critiques. The NUP's proposals are discussed in chapter 6.

[13] Quoted in Kate Bronfenbrenner, Friendman, Hurd, Oswald and Seeber, 5.

It is my contention that failure of the law to protect the right to organize has led unions to activate third parties in an effort to reduce their reliance on inadequate legal protections and strengthen their hand in their battles with employers. In some cases, they mobilize allies, such as community groups or consumers, to put additional pressure on an employer. In other cases, they intervene in a relationship between the employer and another party; for instance, stepping into a legislative debate to block a piece of legislation sought by the employer. The common denominator in all these kinds of strategies is that they make use of the web of interdependent social relations to gain leverage in their relationships with employers. Organizing campaigns are increasingly activating third parties like this because the state *qua* the apparatus of labor law has effectively become a third-party ally of employers.

The role of the state in this story is larger and more complex than the preceding sentence suggests. It is true that federal labor law as it now stands provides employers more opportunities to thwart union drives than it provides workers opportunities to realize their statutory right to organize. But "the state" is far more than labor law, and indeed labor law itself is a complex of laws and not a single unified entity. The majority of private-sector labor relations are governed by the National Labor Relations Act (NLRA, aka the Wagner Act) and its subsequent revisions in the Taft-Hartley and Landrum-Griffin Acts. A significant portion of non-governmental workers, however, fall under the Railway Labor Act (RLA), including airline workers (some workers, predominantly agricultural and domestic workers, are not covered by federal law at all). Federal workers, meanwhile, are governed by a separate set of civil service laws, while state and local public employees are covered by state civil service laws. This study deals exclusively with private-sector workers covered under the NLRA (for reasons I explain below) but even so unions' relationships with government are

complex and overdetermined. Most organizing efforts entail involvement not just with the NLRB (the agency that administers the NLRA), but also with a myriad of other political and regulatory actors. The federalist structure of U.S. government adds another layer to these relationships; labor relations are governed by federal law, but most of the officials and most of the regulation and legislation that unions draw on in their organizing efforts are at the state level. Many of these relationships are deliberately engaged by unions as part of their effort to overcome the difficulties engendered by labor law. In other words, unions seek to draw in other state actors as third parties to help offset the disadvantage that the state *qua* NLRB creates. To speak of "the state" as a single entity is thus obviously inaccurate. More precisely stated, the thickness and density of state structures, agencies and actors generate a web of third-party relationships that affect the outcome of labor struggles in multiple ways. State structures— as a plural, not a singular monolith— play a decisive role in the fate of union organizing efforts, and the state is the most important third party involved in the contest between workers and employers. The state is operationalized here as the web of federal, state and local government actors in the legislative, executive, judicial, and administrative/regulatory realms.

In fact, it is the unique role of the state in U.S. labor relations that has given the labor movement its distinctive cast. This dissertation builds on historical literature that argues that the strategies that the labor movement has developed have been crafted in response to the particular terrain and constraints created by government policy and action. In the late 19th century, a pattern of governmental opposition, and particularly aggressive judicial hostility, to labor was decisive to both shop-floor and political defeats, and gave rise to the voluntarist outlook that dominated union attitudes until the New Deal. Narrow craft unionism and anti-injunction legislative efforts were the signatures of labor activity in the first three decades of

the 20th century. Union aspirations continued to be dashed by judicial interpretation and nullification until the upheavals of the 1930s ushered in a new era in labor relations. With passage and Supreme Court approval of the Wagner Act, unions abandoned anti-statism and turned to the new National Labor Relations Board to win recognition. The half-century starting with the 1947 Taft-Hartley Act saw first a steady erosion of labor rights and then, under the Reagan Administration, a deliberate assault on them; and the constraints on labor activity have remained essentially the same since then. In the early 21st century, the legal and political climate that unions must contend with is thus highly unfavorable, and it is the emergence and effectiveness of strategies to contend with these conditions that is analyzed here.

These developments are explored here through three case studies of union organizing campaigns. The first is SEIU's nursing home organizing project in Florida, housed in Local 1199 Florida (1199FL). The second is HERE Local 226's work in Las Vegas; known locally as the Culinary Union, Local 226 has been organizing casino workers for 15 years. The final case is in Seattle, where the Washington Alliance of Technology Workers (WashTech), a CWA affiliate, Local 37083, is trying to organize information technology workers. All three are high-profile, cutting-edge campaigns that are being closely watched throughout the labor movement. They are all industrial campaigns, i.e., focused not on individual employers but rather on three critical industries in local or regional markets. In each case, union organizers are responding to a difficult, though distinct, set of circumstances and they employ sharply different strategies. In that way, these cases offer not just a chance to see how unions respond to the dual obstacles of employer hostility and inadequate legal protection, but an opportunity to illuminate more precisely how different obstacles generate different strategies. Moreover, by rooting this analysis of the formation of

labor strategies in a theoretical framework, the work here adds a new conceptual dimension to the existing accounts of labor development in the U.S. Similarly, it enriches theoretical discussions about power by taking a theoretical model about social interdependencies on an empirical test drive, so to speak. This dissertation, in other words, applies for the first time a theoretical argument about the nature of power to one of the central axes of American political development, the evolution of working-class institutions in American politics and society.

Such an inquiry comes not a moment too soon. Organized labor in the U.S. is in dire straits, and while the imperative "organize or die" may sound melodramatic, it is essentially on the mark. At stake is not merely the survival of tens of thousands of local unions throughout the country, but the capacity of working-class people to defend their interests in our society. Unions have been the predominant means through which workers have won some measure of self-determination and representation both in the economic marketplace and in the political arena. From the eight-hour-day to Social Security benefits to health and safety laws, the labor movement has been the main force in advancing the social and economic needs of the less well off. This is not to say that everything labor has done serves broad social interests— that would be absurd— but rather to assert that organized labor has been the main vehicle for advancing those interests, and more to the point in the current climate, that without organized labor those interests tend to go unrepresented. It is no accident that the decline of union strength in the last three decades has coincided with the increase in income inequality, the loss of real wages, and the growing proportion of Americans who are without health insurance or retirement benefits. The fate of labor is tied up with the fate of America, and the enormous difficulties workers face in organizing unions raises troubling questions about the ability of the American political system to make good on

the promise of "liberty and justice for all." By providing a detailed study of the interdependent relationships between unions, employers and the state in three organizing campaigns this dissertation thus not only offers an analysis of the prospects for revival for the labor movement, but also makes a contribution to the understanding of class relations in the U.S. today.

II. Theoretical framework

The theoretical anchor of the dissertation is an analysis of the relational power between actors. In a way, the animating question for the entire project derives from the Sweeney soundbite about the need to organize "despite the law": Just how exactly does one organize despite the law? How can workers prevail against employers, who are much more powerful, if they do not have the protection of the law? Stated more generally, the question is how do people in subordinate classes exercise power? The answer to this question lies in the relational nature of power. Power is a complex, indeed overdetermined, concept, and in focusing here on power as relational I do not mean to deny its other dimensions. The framework laid out here is not meant as a comprehensive overview of the concept of power, but rather as an explication of one particular theory of power that I find both persuasive and relevant to my analysis of labor relations. That theory comes from the work of Frances Fox Piven and Richard Cloward; it is systematically developed in a forthcoming article, "Rulemaking, Rulebreaking and Power," though the central ideas they present there have run through all of their work.

I thus start from the observation that power is fundamentally relational; and that further, excepting the case of physical violence, power is always in some way reciprocal. That

is, A may have power over B in everyday terms, but B is not utterly powerless to affect the relationship between A and B.[14] The relationship between employers and workers illustrates this point. While it is obvious that employers have enormous power over their employees because the latter are dependent on the former for the means of survival, it is also clear that workers have at least potential power because without them and their accumulated labor capitalists cannot produce anything or profit from anything. Piven and Cloward have formulated a useful explication of this quality of reciprocity by theorizing the source of power as located in the interdependencies of relationships:

> Power resources are embedded in the patterns of expectation and cooperation that bind people together... .People have potential power, the ability to make others do what they want, when those others depend on them for the contributions they make to the interdependent relations that are social life... .And because cooperative and interdependent social relations are by definition reciprocal, so is the potential for the exercise of power reciprocal.[15]

This view of power is not wholly new; it is, for instance, implicit in Marx's description of the development of the proletariat in capitalist societies. Piven and Cloward, however, provide a more precise description of the inner mechanism— contributions made in interdependent social relationships— that underlies the dialectical process Marx describes. In the example of workers and employers, workers are dependent on employers for employment and wages, and that gives employers power in their relationship. Employers, in turn, are dependent on workers for the production of goods or the provision of services, and that gives workers power in the relationship.

Crucially, it is ultimately the possibility of *withdrawing* their contributions that gives actors power in interdependent relationships. Put differently, the potential leverage inherent in a social relation cannot be realized unless it is "actionable." "Interdependencies generate

---

[14] Dennis Wrong, *Power: Its Forms, Bases and Uses* (New York: Harper Row, 1979), 10-13.

potential resources for power. Whether they can be acted on or not is, however, a highly contingent matter."[16] For workers, the classic exit option is the strike, and the actionability of workers' power depends on their ability to organize together and, in the last analysis, on their capacity to collectively withhold their labor. How easy it is to make good on the threat of exit, how credible the threat is in the first place, and how effective the exercise of the exit option is are all factors that tip the balance of power in a relationship. These factors depend on a host of other things.

One of these things, central to my analytic framework, is the position and power the actors have in other social relations and how those other social relations are brought to bear on the primary relation in question. "The effective use of the leverage inherent in interdependencies," explain Piven and Cloward,

> requires that the power seekers be free from constraints that might be imposed by their interdependent relationships with other parties, as when would-be peasant insurgents are constrained by the threat of religious excommunication, or when labor insurgents are constrained by the threat of intervention by the courts.[17]

The latter example is, of course, directly relevant to this dissertation, and I have already indicated the crucial role that the state has played in labor relations. That role is the subject of chapter 2. Suffice it to say here that the U.S. state has generally been an ally of the employing class, and government intervention on behalf of employers has often limited workers' power with devastating effectiveness; not just through court injunctions, but also through the use of troops to break strikes, the arrest of union leaders and strikers, and the outlawing of effective tactics like sympathy strikes, to name only the most obvious examples.

---

[15] Frances Fox Piven and Richard Cloward, "Rulemaking, Rulebreaking and Power" (forthcoming), 13.
[16] Ibid., 20.
[17] Ibid., 21.

Relations with the state form only one, albeit the most decisive one, of many other sets of relations that affect the prospects of workers seeking to organize. Consumers may be mobilized by workers against an employer for his unfair treatment of workers; or they may be mobilized against workers by an employer for the inconvenience they cause consumers (e.g., in transportation industry strikes). Moral suasion, such as enlisting clergy in their cause, or public relations strategies, can be brought to bear on the struggle between workers and capitalists by either side. One side or the other can also seek to increase their leverage by intervening in another relationship of importance to the other side; for instance, workers can try to put a wedge between a company and its investors or lenders. The density of social relationships— the web of interdependencies— creates multiple opportunities in almost any worker-employer relationship for third parties to be strategically engaged. The leveraging of other social relations to gain the upper hand in a particular interdependent relationship can also be seen as the "socialization of conflict," in Schattschneider's formulation. Schattschneider points out that it is the losing side— the less powerful side— in a struggle that seeks to draw in others in order to shift the balance of power in its favor.[18]

A second variable in the actionability of social contributions as power resources has to do with what Wrong, following Gamson, terms the "liquidity" of resources. "Collective resources," he notes, "are far more variable in their liquidity than individual resources."[19] That is, the process through which an individual (say a factory owner) can actualize his power is different from, and generally much easier than, the process through which a collective actor must go to do the same. This is another way of saying that in order to realize power, workers and other members of subordinate classes must first solve the problem of

[18] E.E. Schattschneider, *The Semisovereign People* (Orlando: Holt, Rinehart and Winston, 1975), chapter 1.
[19] Wrong, 134.

collective action. Collective actors must coordinate their actions in order for them to be able to effectively wield their contributions as a leverage source.

Prior even to this problem of coordination, however, members of a group must recognize that they *have* potential power, and then they must be willing to defy authority in order to exercise it. The first of these obstacles has to do with the role that ideology plays in securing the status quo; and the second with the role that rules play in securing it. Dominant classes are always at pains to hide from subordinate classes their potential power. "Contributions to interdependent relations must be recognized before they can become actionable... .recognition of power capacities must overcome inherited interpretations which privilege the contributions of dominant groups, as well as the continuing ability of dominant groups to project new and obscuring interpretations."[20] Thus, for instance, the social construction of private property values ownership of an enterprise as a greater contribution to economic production than the work of the employees who actually produce the goods or services. Before they can use their contribution of labor as leverage in their relationship with employers, workers have to recognize it, which means they must first reject this usual reading of capital and labor.

Rules, for their part, are designed by those in power in order to keep others out of power. "Rulemaking is, whatever else it may be, a power strategy.... since the rules are fashioned to reflect prevailing patterns of domination, they prohibit some people but not other people from using the leverage yielded by social interdependence."[21] Rules, in other words, facilitate the ability of some actors to realize their power, while curbing the ability of others to use theirs. Along the way rules also take on an ideological function because they legitimate some exercises of power and delegitimate others. Sticking with the worker-

[20] Piven and Cloward, 20-21.

employer example, prohibiting strikes not only bans labor's most effective weapon but leads to a portrayal of striking workers as outlaws or thugs; meanwhile, where employers are free to lock out workers and/or replace them with strikebreakers, these actions are seen as reasonable exercises of authority. Wrong's typology is useful here, too, in illuminating the ideological functions of rules. He divides authority, the form of power that he categorizes as "issuing commands" (i.e., rules), into "coercive authority" and "legitimate authority." The former relies on the threat of force for its effectiveness; the latter on the acceptance of the source of the authority as legitimate.[22] Legitimate authority is more effective and efficient, he notes, and for that reason, "power always seeks to clothe itself in the garments of legitimacy."[23] For subordinate groups, therefore, forging collective identity and deciding to act (i.e., actualize their power) always involves a process of re-interpreting the world as it has been presented to them. The forging of collective identity is closely related to the development of solidarity— the very watchword of labor power and, not coincidentally, its core ethical value— and solidarity can be conceptualized as both a prerequisite and a source of power for collective actors.[24]

All this brings us to the question of agency. If we take the exercise of power to be intentional behavior, then the relationship between structure and power, or structure and agency, can be seen as dialectical.[25] Just what we ascribe to power (the possibilities for leverage within interdependent relationships) and what to structure (the impossibilities built into them) depends on what we understand by agency. Following Piven and Cloward, I understand human agents to have "a reflexive capacity to evaluate their experience."

---

[21] Piven and Cloward, 23.
[22] Wrong, 35-52.
[23] Ibid., 52.
[24] See Wrong, 130-145.
[25] Steven Lukes, *Essays in Social Theory* (New York: Columbia University Press, 1977), 29.

Furthermore, the ability to generate new interpretations and devise new strategies in the face of structural constraints and dominant ideologies grows directly out of people's experience of their own contributions in interdependent relationships. "The actual experience of making contributions to social relationships is the objective and material basis for the self-conscious reevaluation of social relationships by human agents... .The fact of interdependence is the foundation for... alternative visions of how social life could be organized." While social structure is a constraint, it is nonetheless *also* "the objective grounding for agency."[26] It is precisely the capacity to recognize their contributions and constraints— both their leverage opportunities in the web of interdependent relationships and the rules and relationships stacked against them— that has led workers and unions to forge new organizing strategies as they face the obstacles that have decimated the labor movement in the last 30 years. Tracking this development and locating more precisely what the possibilities for labor power are in the 21st century is the object of this dissertation.

III. Research objectives

The framing argument of the dissertation is that it is the unique role of the American state in U.S. labor relations that has given the labor movement its distinctive cast. Specifically, I argue that the failure of labor law to substantively protect the right to organize is the driving force behind the emergence of new organizing strategies. Thus my primary research objective is to explore how, more precisely, legal constraints shape union campaigns; to understand how strategies evolve in response to the legal terrain. Union strategies are shaped in response to employer behavior, of course, as well as legal constraints;

[26] Piven and Cloward, 40-41.

indeed, employer behavior is impossible to untangle from the legal/political setting, because it is also largely shaped by what the law permits and enables employers to do in fighting the unionization efforts of their workers.

In addition to analyzing the role(s) of the state in union organizing, this dissertation seeks to map the role of other third parties in union drives. I want to determine which interdependencies, which relationships, are the most important sources of labor power today. I am also interested in documenting how conscious the shifts in strategy away from reliance on the law are; and similarly, how conscious the turn to other third parties is. It is thus also the agency of union leaders and organizers— their analyses of their situation and their creative use of the web of social interdependencies— that I look to assess. The larger question that lurks behind this assessment is, What are the prospects for large-scale organizing and a reversal of labor's declining density? The analysis here of the structural constraints facing labor today and the strategic responses to those constraints are meant to offer some insight into the future possibilities for the U.S. labor movement.

A quick word about what is *not* being studied here is in order. How labor law got to be the way it is today is an interesting question— and one about which much has been written— and the omission of discussion of that development is not for lack of appreciation of its importance. Rather it is to maximize clarity of the research objective here, in which the state is an *independent variable* and organizing strategies are the dependent variable.

IV. Research design and data collection

The core of the empirical work is three case studies of current industrial organizing campaigns: SEIU Local 1199FL, HERE Local 226, and CWA Local 37083. The analysis of

these three unions is qualitative in nature and is based on in-depth primary research. The choice of these three particular campaigns was based on conversations with union officials at the AFL-CIO as well as CWA, HERE, UNITE and SEIU, additional conversations with several labor journalists, a review of the last seven years of the AFL-CIO's weekly *Work in Progress* bulletin and my own general knowledge of the labor movement. As noted, all three cases are comprehensive industrial campaigns in a local or regional market, and all three are considered innovative, cutting-edge efforts that are being closely watched by organizers throughout the country. The three cases also represent three important sectors of the U.S. economy— healthcare, gaming and information technology. All three industries fall under the jurisdiction if the NLRA. I have focused exclusively on NLRA private-sector organizing for several reasons. First, because public-sector organizing is governed by state law, with considerable variations from state to state. Moreover, public-sector employers do not generally fight unionization efforts to the same degree or with the same intensity that private-sector employers do. Including public- and private-sector cases in the same study thus might obscure as much as it clarifies. Furthermore, there is general agreement that the crucial hurdle for labor's ability to regain a significant role in the U.S. is private-sector organizing, both because of the primacy of the private sector to the nation's economy and because of the virulence of private sector employers' opposition to unions. Longtime labor strategist Stephen Lerner, for instance, has said, "Organizing millions of private sector workers in the face of vicious employer opposition, at a time of incredible corporate wealth and power, is the central challenge of the labor movement."[27]

SEIU's nursing home campaign in Florida uses NLRB elections at individual nursing homes to win union recognition. After the elections, the union mobilizes community allies

[27] Lerner, 10.

and uses media to secure first contracts. While largely successful, the difficulty in organizing this way is that it is immensely time- and resource-intensive. Thus the union has increasingly turned to Florida state politics, where the state funding and regulatory oversight of the industry provide a series of interdependencies that the union hopes one day to leverage into industry-wide agreements. 1199FL has made a splash in Florida politics, though in a Republican-dominated state they still face a significant uphill struggle.

In Las Vegas, HERE finds itself in an extraordinarily strong structural position, which has allowed the union to successfully organize virtually every major new casino on the Las Vegas Strip since 1989. Unique labor market characteristics combined with unusual leverage opportunities that the gaming industry's expansion opened up have enabled the union not only to organize tens of thousands of new members, but to establish a procedure for organizing that sidesteps the biggest pitfalls of the NLRB election process. The result is hands down labor's biggest success story anywhere in the U.S.

In Seattle, meanwhile, CWA's WashTech project has been dealt a particularly bad hand structurally. The heavy reliance on contingent labor in the IT sector presents an immediate legal obstacle for the union because it is virtually impossible to organize temp workers and permanent workers in the same bargaining unit. This obstacle has led WashTech to abandon organizing under the NLRB's auspices altogether. Foregoing any legal standing, the union has instead fought for workplace improvements outside the collective bargaining system; and they have been active in Washington state legislative politics. While the union has a significant media profile, at the end of the day it has very few concrete gains to show for its efforts.

I traveled to Miami, Tampa, Las Vegas and Seattle to conduct interviews and gather other primary source material for the dissertation. I spent eight days in Miami in May and

June 2002, with a one-day trip to Tampa. In October 2002, I was in Las Vegas for 10 days doing field work there. In June 2003, I spend seven days in Seattle.

My primary data sources in all three cases were extensive interviews with union leaders. Other union sources included reports, memos, surveys, and organizing literature. I knew from experience at the outset of the research that written union records tend to be incomplete and uneven, so I designed the study to compensate for this weakness. I used the interviews as my main information source, and tried wherever possible to cover the same ground with multiple sources. I generally asked interviewees from one union the same questions, then used the written sources to corroborate the oral accounts. The interviews also helped fill in some of the gaps in the written sources, and in all three cases I was fortunate to be able to ask follow-up questions once I had reviewed both written and oral data. Newspaper and other media accounts were a crucial second set of sources. In all three cases, I relied on voluminous news coverage of the campaigns. These sources were valuable in part because they constituted my only consistent sources independent of the unions themselves. There were a variety of other sources that varied from case to case, including NLRB complaints, charges and decisions, government websites, trade associations and employer literature. Specifics about the data for each case are detailed at the beginning of each chapter.

I had originally planned to include more data from employers, including interviews with employers. For a variety of reasons, these proved more difficult to organize than I had anticipated (and in the two cases where I requested interviews, I was turned down). As the dissertation began to take shape, however, I realized that while they undoubtedly would have made it a more interesting dissertation, they also would have diffused its focus on the evolution of *union* strategies. The development of employer strategies is beyond the scope of

this study, and as for employer behavior during various campaigns, that could be and was documented through other sources. Thus while I recognize the absence of employer interviews as a weakness, I think in the end it is a tolerable one.

One other note is relevant here in the interest of full disclosure. I have been a union official for the last 15 years. I have worked for two of the unions studied here. I am currently the communications director at CWA Local 1180; Local 1180 is a public-sector local in New York City, 3,000 miles away from WashTech, but both unions are affiliated with the same international. I also served as the communications director for SEIU's Las Vegas Healthcare Campaign in 1997. Actually, at the time the SEIU campaign was housed in a triple-wide trailer in the parking lot of the Culinary Union. That job gave me not only experience with SEIU's healthcare sector and involvement in the discussion and development of its strategies, but also exposure to HERE's work in Vegas. Working in Las Vegas gave me informal access to and knowledge of the Culinary Union, the gaming industry, and Nevada politics. SEIU's nursing home campaign in Florida was initially a joint project with UNITE, and I covered the campaign for *UNITE! Magazine* as a freelance writer from 1998 through 2001. I also covered some of the Pillowtex story for UNITE. My job as a researcher was made easier by my intimate familiarity with labor institutions, people, campaigns and culture.

V. Research findings

This study confirms the work of other scholars that have found that U.S. labor law in its present form is a barrier to union organizing. Perhaps more importantly, the experience of the three unions examined here makes clear that organizing *on scale* is impossible under current conditions. Both SEIU in Florida and HERE in Las Vegas have had considerable

success in organizing individual employers, proving that with a good power analysis, strategic use of leverage and adequate resources unions can succeed in organizing. But the effort and above all the time it takes to prevail in individual battles preclude the possibility of organizing enough workers to increase union density in the United States. In Seattle, meanwhile, the law is so unfavorable to IT workers' position that WashTech has not yet found a way to establish collective bargaining agreements or other stable means of institutionalizing workers' power.

My research also very clearly demonstrates that the constraints of labor law do indeed drive union strategy. As noted above, unions devise strategies not only in response to the law, but also in response to employer behavior. In a day-to-day sense, in fact, it is the employer's opposition that determines union tactics. But employer behavior is impossible to untangle from labor law, because so much of what employers do in fighting unions is determined by the parameters of the law and the opportunities the law presents to employers to leverage the state as a third-party ally. In particular, it is the law's inability to curb employer hostility and punish employer infractions that has sent labor searching for new ways to organize. It is the inability of the law to protect the statutory right to organize that drives this search. Thus unions are increasingly abandoning NLRB elections as the vehicle for winning union recognition; or perhaps more accurately, they are abandoning reliance on NLRB procedures to guarantee the rights the law presumably establishes. Whenever, wherever, however they can, in big ways and small, unions are replacing reliance on the NLRB with reliance on other third parties, other relationships. In some places, like Las Vegas, unions can do this on an industry-wide scale; because of its unusual leverage opportunities, HERE in Vegas has been able to create an alternative method of establishing union rights. In other places, where no such leverage exists, unions still seek to end run the

NLRB as much as possible. In Florida, SEIU grinds through NLRB elections because they do not have the power to establish another method, but they keep their union drives underground for as long as possible to minimize the labor board's role in their campaigns; and they operate under the assumption that the *de jure* right to organize will never be enough to actually win.

"American workers no longer have a right to organize unions," AFL-CIO Organizing Director Stewart Acuff has said, "and we have to *act* on that. And the first thing we have to do is get away from the NLRB." Getting away from "that hellatious process" is thus indeed a very conscious shift in strategies for union organizers.[28] Equally conscious and deliberate, my findings indicate, is the search for other relationships, other parties to draw into the employer-worker relationship in order to increase union power. All three of the campaigns I studied— and countless others throughout the labor movement— are elaborate multifaceted operations that engage many different third parties in the course of their battles with employers.

None of these results came as a surprise to me; indeed, all of them were predicted by my initial hypotheses. What I did not anticipate was the degree to which other state actors (outside the NLRB/labor law) have emerged as the most important third party actors in the organizing strategies of unions. As noted earlier, "the state" is an inadequate analytical unit for this study because there are myriad agencies on different levels working in different directions that constitute the state structures that bear on union organizing. Nonetheless, it is to a variety of *state* actors that unions are turning even as they are doing so in order to reduce their reliance on a different set of *state* actors; thus the state (albeit as a plural set of actors) remains centrally important. It is by no means exclusively state actors that unions are

[28] Stewart Acuff, "Organizing in the 21st Century: Strategic Challenges for the Labor Movement,"

engaging as third parties— community allies and financial institutions, for instance, have been crucial to union campaigns— but state actors remain centrally important to union strategies and union success. There are two reasons for this. First, because, as noted earlier, the proliferation of state structures, agencies and actors generates a dense web of interdependencies for unions to draw on. Second, however, and more fundamentally, because the state plays a unique role that other third parties do not, that of the principal rule-maker in society. Therefore state actors are strategically critical parties because of their ability to redraw the rules that shape the balance of power between all kinds of social actors.

The state's function as rule-maker is the subject of chapter 2, which chronicles the historical development of labor strategies in both the 19th and 20th centuries. Chapter 2 also details the contemporary state of the law and gives an overview of the strategies that unions are using to overcome the dual obstacles of employer hostility and inadequate legal protection. Chapters 3, 4, and 5 present the three case studies: SEIU Local 1199FL in Florida, HERE Local 226 in Las Vegas, and CWA Local 37083 in Seattle, respectively. In chapter 6 I offer a summary of the findings and some reflections on the choices the labor movement has in trying to solve the riddle of organizing "despite the law."

---

speech at Cornell University School of Industrial and Labor Relations (New York, April 9, 2003).

CHAPTER 2

The long arm of the law: Labor policy, labor relations and labor strategies

I. Introduction: The rules of the game

One cannot comprehend the predicament of the labor movement today, nor its responses to that predicament, without an understanding of the role of the state in shaping U.S. labor relations. Throughout our history the American state has had a profound effect on not just the outcomes of labor struggles but on the very forms that those struggles take. From severe repression at the turn of the last century to willing accomplice in the destruction of unions at the turn of this one, the policies and actions of the U.S. government have played a direct role in determining the strategies unions pursue to organize workers. In the drama between workers and employers, it is definitely the state that is the leading supporting actor. The support of that supporting role has gone mostly to employers. But there were moments when that pattern was disrupted, and there are complexities to the contemporary American state that make its role much more multifaceted.

Piven and Cloward's article on "Rulemaking, Rulebreaking and Power" provides a useful framework through which to understand the role of the state as the crucial third party in deciding the outcome of the struggle between workers and employers. That role has to do with the use of rules as power strategies and the state's function as the primary locus of rule-making in modern societies. Rules, as noted in chapter 1, "prohibit some people but not

other people from using the leverage yielded by social interdependence."[1] Power stems from the contributions people make in interdependent relationships and thus the extent of people's power depends on how crucial their contributions to a given relationship are. However, it also depends on how actionable their potential leverage is, and the function of rules is to make some contributions more actionable and others less so. There are two ways in which this happens; one is through legitimation, the other through prohibition (and of course, these often go together). Rules define the contributions actors make and thereby "legitimate the actions available to some contenders while delegitimating the actions available to others." A "vivid example" of this "social construction of contributions," Piven and Cloward note, is the legal construction of private property.[2] Put bluntly, "what some contenders expropriate comes to be defined as private property, what others expropriate is defined as stolen goods."[3]

This brings us to the use of rules to impede actionability by prohibiting the use of some forms of leverage, and here the experience of labor comes immediately to mind. Rules prohibiting strikes (but not lock-outs) or severely limiting what kinds of strikes are legal are an obvious example. In the second half of the 19th century, all of the era's big strikes were defeated by the use of court orders to enjoin strikers, followed by the arrest of strike leaders and the use of troops. The sanction of the law made the withdrawal of labor (the leverage of workers' contributions) first illegal and then virtually impossible to carry out, if only because strike action became extremely costly. In 1947, a decade after the right to strike had been codified and recognized as legitimate by the U.S. government, the Taft-Hartley Act curtailed that right by banning sympathy strikes. These had proven to be effective weapons for labor,

[1] Frances Fox Piven and Richard Cloward, "Rulemaking, Rulebreaking and Power" (forthcoming), 23.
[2] Ibid., 25.

expanding the scope of conflict and giving workers greater leverage, and in response to strong employer pressure, they were outlawed for that very reason. The point is that rules are, quite deliberately, not neutral in their effects. They restrict the ability of some actors to activate their power while not restricting others. "Laws shore up power... by singling out for prohibition or restriction the strategies available to some actors and not the strategies available to others."[4]

It follows that the rules themselves are an object of contestation. Since rules help determine whether and how actors can realize power in social relationships, the struggle over rules is part of the effort to maximize leverage, and in modern societies the main arena for that struggle is the state. It is the state (with its "monopoly on the legitimate use of force," in Weber's famous formulation) that is the crucial rule-maker, and law-making and law enforcement are thus the main mechanisms for limiting challenges to existing patterns of domination in social relations. Moreover, "once successfully promulgated, rules constitute a new constraining social reality." Rules are the outcome of past power struggles, and then become constraints on future possibilities for the exercise of power. "Once objectified in a system of law, the rules forged by past power struggles shape ongoing conflicts by constraining or enhancing the ability of contemporary actors to use whatever leverage they have in interdependent social relations."[5] Again, labor relations provide a clear example. The constraints faced by unions today— e.g., the limits on the right to strike, restrictions on picketing, the legal hurdles that must be cleared to establish the right to bargain, the lack of access organizers have to a workplace, etc.— are the sedimented structure created by the history of class struggle. And they are also the starting point for current power strategies.

---

[3] Ibid., 26.
[4] Ibid., 28.
[5] Ibid., 30.

Just as rule-making is a power strategy, so rule-breaking is a power strategy as well. Precisely because rules often outlaw the activation of the most effective kinds of leverage that people in subordinate classes have, people sometimes exercise the leverage they have in defiance of the rules. Thus while U.S. unions in the early 20th century sought to change the rules by passing anti-injunction legislation at the state level, they also deliberately disobeyed court orders enjoining strike activity.[6] Rule-breaking, of course, comes with costs, sometimes severe costs. Thus actors trying to exercise power and gain leverage amidst an unfavorable set of rules face strategic questions and trade-offs. Their possible options may include trying to use the leverage available to them within the rules, working to change the rules, increasing their leverage by widening the conflict and drawing in other social relations, and/or breaking the rules. Over time, struggles for social change are likely to do all of these things, and the labor movement in the U.S. has certainly engaged each of these strategies in the course of its history. In the contemporary era, both rule-breaking and attempts to change the rules have played relatively minor roles, though the 2003 introduction of a new labor law reform bill may portend a change.

At any rate, the foregoing discussion helps unpack the central role the state plays in the struggle between workers and employers. The state sets the rules that dictate what contributions may be mobilized by workers and employers and how they may be mobilized. The legal apparatus governing labor relations is at once the outcome of past struggles over the right to organize and the starting point that determines current strategies trying to realize that right. Much has been written about how the law came to be what it is today; less has been said about the role the law plays in shaping labor organization and strategy. This study

[6] William Forbath, "The Shaping of the American Labor Movement," *Harvard Law Review* (Vol. 102, April 1989), 1214. "Contempt of court [is] obedience to law," Forbath quotes Samuel Gompers saying.

addresses the latter question. Fortunately there is some good historical material that examines the role the U.S. state has played in the 19th and early 20th centuries in the development of the labor movement, providing a foundation for the analysis of the situation at the outset of the 21st century.

II. State repression and the rise of voluntarism

Industrialization brought profound and often wrenching changes to the United States, and the second half of the 19th century was characterized by, among other things, periods of great labor unrest and the emergence of the modern labor movement. The dominant characteristics of the movement as it entered the 20th century— its anti-statism (or voluntarism), its commitment to collective bargaining and craft unionism— were forged in response to labor's experience with the state. There are a number of authors that have chronicled how this development unfolded.

Ira Katnelson's 1981 book *City Trenches* is concerned with the divisions between work life and community life in urban politics. Katznelson seeks both to explain the origins of this distinctively American pattern of political development, and to delineate some of its consequences. Beginning in the antebellum period, American workers identified themselves as workers at work, often organizing across ethnic lines, but as ethnics at home, where ethnic and territorial associations, such as local political parties, churches and fraternal organizations, were dominant (in contrast to the possibilities of identifying as workers both at work and at home, or as ethnics both in the workplace and the neighborhood). This unique division of political identities emerged in the intersection of the modern working class, the modern city and the modern political party, all of which were formed in this

period. By 1870, these institutions and the separate organization of work life and community life were firmly established. Unions were focused narrowly on workplace issues, not larger class issues, says Katznelson, and they established few ties to political parties. There were some efforts in the decades before the Civil War to establish workingmen's parties and these had some isolated victories, but these efforts were short-lived. The pre-war unions, meanwhile, which achieved some success in calling strikes and raising pay scales before being largely decimated by the economic crisis of 1857, "left the legacy of restricting their attention to immediate trade-union demands and eschewing party activity and political action outside the workplace."[7]

Katznelson locates the causes of this separate development of work and community politics in "key constitutional and political characteristics of the American system."[8] In contrast to later writings that single out the hostility of the state and particularly of the courts, *City Trenches* emphasizes the "relative tolerance" of the courts for trade unions and the "comparatively mild" dose of repression that unionists had to contend with.[9] Contrasting the U.S. experience with that of France and England, Katznelson's point is that in place of a tradition of illicit and state-hostile trade unionism, America developed a labor tradition that was "robust and open."[10] Independent, autonomous trade union activity existed because it was *possible*. He points to a second institutional feature as well, namely the early extension of the franchise to all adult white men. Because workers were not excluded from electoral politics as a class, class-based political parties did not form in the U.S. "White workers quickly entered the world of citizens; the state, by belonging to them, at least formally, was

[7] Ira Katznelson, *City Trenches: Urban Politics and the Patterning of Class in the United States* (Chicago: University of Chicago Press, 1981), 55.
[8] Ibid., 58.
[9] Ibid., 59.
[10] Ibid., 60.

not available as an agency against which workers as a class could be mobilized... .Workers as citizens did not feel they needed to battle the state, for they were included in its embrace."[11] Instead, workers entered the world of politics through ethnic and territorial party affiliations. Katznelson thus locates the beginnings of the characteristic traits of American trade unionism, with its focus on workplace issues and its refusal to oppose any of the core institutions or structures of American politics, all the way back in the first half of the 19th century. The failure to develop a "global class politics" grows out of key institutional features in American politics. The result, then and now, is that workers "oppose capitalists rather than capitalism."[12]

The "relative tolerance" of the courts in Katznelson's account is contradicted by others, who emphasize judicial hostility to labor's aspirations. Part of this divergence is explained by the time period being studied. Katznelson looks at the early 19th century through 1870; most of the competing narratives focus on the later 19th century and early 20th century. It is really the last quarter of the century when labor strife was most pronounced and state intervention on behalf of employers was decisive, brutal and consistent. Nevertheless, this does not comprise the whole of the difference. Christopher Tomlins, for instance, in *The State and the Unions* (1985), finds marginality and tenuousness in the legal standing of unions in the same era that Katznelson finds relative tolerance. Katznelson cites the 1842 *Commonwealth v Hunt* decision in Massachusetts as a recognition of workers' rights to organize and bargain collectively.[13] Tomlins, by contrast, points to the decision's narrow focus on the permissibility of the voluntary association of individuals; it did not protect the right of unions to enforce rules and standards, allowing for the association of individuals but

[11] Ibid., 61-62, 64.
[12] Ibid., 71.
[13] Ibid., 60.

conferring no legal status on any institutional expression of that association. Subsequent jurisprudence on the issue of voluntary association placed so much "stress on the qualifying adjective 'voluntary' by the end of the nineteenth century that little significance seemed to attach to the noun."[14] More generally, Tomlins writes that the ideas of the labor movement ("a unique synthesis of artisanal corporate tradition, republican discourse, and social democratic collectivism") were "repugnant to the doctrine and practices at the center of the American common law tradition."[15] The evolution of the *Commonwealth* decision is one of several examples he uses to show the severe restriction on labor activity, from striking to boycotting to picketing, etc. He concludes the legal status of unions was "profoundly uncertain" throughout the second half of the 19th century.[16]

Martin Shefter, who ultimately is closer to Tomlins than to Katznelson on the issue of judicial disposition towards unions in the 19th century, nonetheless agrees with Katznelson on many points, most crucially on the effect of the early enfranchisement of white men in the U.S. In *Political Parties and the State* (in an essay originally published in 1986), Shefter notes, "the mobilization of the working class into politics through the nation's political institutions, rather than in opposition to them, made its members intensely loyal to the American regime."[17] Further, workers' affiliations and loyalties to the two major parties created a problem for unions; they could not endorse candidates or take political stands without risking alienating one group of members or another. As a result, the constitutions and by-laws of unions in the late 19th century invariably barred such political involvement. Echoing Katznelson, Shefter says, "thus the openness of the American political system

---

[14] Christopher Tomlins, *The State and the Unions: Labor Relations, Law, and the Organized Labor Movement in America, 1880-1960* (Cambridge: Cambridge University Press, 1985), 44, 51.
[15] Ibid., 33.
[16] Ibid., 59.
[17] Martin Shefter, *Political Parties and the State: The American Historical Experience* (Princeton: Princeton University Press, 1994), 112.

fostered a division between the organizations through which workers pursued their interests at their workplace, on the one hand, and in the realm of politics, on the other."[18] But whereas Katznelson points to the "relatively mild" government repression of labor activity, Shefter sees instead an actively hostile state, and moreover, sees that hostility as constitutive of the "pure and simple trade unionism" model that predominated from the late 19th century until the New Deal.

In the period Shefter looks at (1861-1894) he describes a "wide array of groups and organizations established by workers" that together formed a social movement, the labor movement, with goals that were "broad— involving nothing less than transforming the position workers occupied in American society— and quite threatening to the nation's upper class and its political leadership."[19] This movement included labor reform associations (the Knights of Labor being the biggest and best known) and socialists as well as trade unions. There were substantial differences among these various groups, most significantly the split between those who thought of "labor" as the "producing classes" (which included laborers, skilled workers, farmers and small manufacturers) and those who defined it as strictly wage workers. The former, which included the Knights of Labor, rejected the rise of wage labor as "wage slavery" and sought instead to try to (re)assert a more cooperative model of production based in republican ideals. The latter, which included the American Federation of Labor (AFL) and its predecessor, the Federation of Organized Trade Unions (FOTLU), meanwhile, were ready to accept wage labor and rejected the producerists' belief that there were no fundamental conflicts of interests between workers and small employers (both "producers"). Changes in production in the late 19th century brought an increase in class divisions, and an increase in strike activity. Employers, for their part, became more

[18] Ibid., 140.

determined to destroy unions and the resulting "counteroffensive by business and the state threatened the very survival of the labor movement."[20] It was the "extraordinary authority of the American judiciary" that was the primary means of state repression of labor. Both political and economic action were blocked by the courts, frequently backed up by the National Guard. "Broadly speaking," says Shefter, "the late nineteenth century witnessed an increasing tendency on the part of the nation's economic and political elites to close ranks in an effort (that largely succeeded) to stave off challenges from below to their prerogatives."[21] And where employers could count on the government to back them, "unions found it almost impossible to survive."[22]

In response to this assault from the allied forces of employers and the state, labor retreated from its broader challenges and sought to survive by seeking "an accommodation with the forces arrayed against them— thus attempting to protect the gains of at least a segment of the working class by narrowing the constituency of labor unions and seeking to placate politicians and public officials by agreeing to stay out of the political arena."[23] The alternatives (broad-based organizing and escalation of economic confrontation, and/or political efforts to gain control of the state through electoral means) were abandoned because, says Shefter, they had been tried, and they had failed. "In the final analysis," Shefter says, "the AFL's assessment of the political and economic constraints within which the American labor movement was compelled to operate... was, in fact, a rather accurate one."[24]

Many subsequent accounts of the emergence of "pure and simple" trade unionism and the voluntarism of the AFL have shared Shefter's basic thesis, that massive state hostility

---

[19] Ibid., 125.
[20] Ibid., 135.
[21] Ibid., 142.
[22] Ibid., 150.
[23] Ibid., 147.
[24] Ibid., 167.

to union aspirations crushed the possibility of a broader, more inclusive or more radical labor movement. Many, too, have highlighted the central role that the courts played in this development. William Forbath's 1989 article "The Shaping of the American Labor Movement" expounds this argument in illuminating detail. Where Shefter leaves off in describing the narrow, anti-statist craft unionism of the late 19th century AFL as an accommodation to state hostility in the interests of survival, Forbath picks up with a rich account of how that hostility shaped both labor strategies and labor thinking.

> During the late nineteenth and early twentieth centuries, courts, legal ideology and legal violence played a decisive part in shaping the consciousness and aspirations of organized labor in the U.S... .During the decades bracketing the turn of the century, courts exacted from labor many key strategic and ideological accommodations, changing trade unionists' views of what was possible and desirable in politics and industry... .Courts shaped labor's strategic calculus.[25]

Court activism thwarted labor on two fronts. On the one hand, courts aggressively used judicial review to invalidate labor legislation. Forbath reports, for instance, that by 1900 roughly 60 labor laws had been overturned. Eventually, "mistrust of reform by legislation hardened into an adamant opposition to such reforms" as labor activists concluded political reform was futile.[26] On the other hand, the courts used injunctions to intervene in labor disputes. Injunctions were issued against sympathy strikes and secondary strikes; against city-wide boycotts, a popular strategy for winning union recognition; and eventually even against primary strikes that were not narrowly defined by demands for immediate gains in wages and work conditions (e.g., recognition strikes were enjoined by this method). The Sherman Antitrust Act (1890) was used by the courts to claim that unions were illegal combinations restraining commerce, increasing the resort to injunctions even further. The era's most famous strikes, from the great uprising of 1877 to the Pullman strike, were all defeated by a

[25] Forbath, 1113, 1116.
[26] Ibid., 1146.

pattern of injunctions, which paved the way for arrests of union leaders and the use of troops. Furthermore, employers, officials and the press used all this to portray striking workers as outlaws and thugs, undermining public support and inviting further state repression. The courts "made plain that the law was implacably opposed to broad unionism and the kinds of aggressive, industry-, community-, and class-based tactics it often entailed."[27] Unions concluded that where broad class-based unionism obviously would not work, "minimalist politics, craft unionism, and restrained but staunch strike policies" could.[28]

This strategic retreat, though, ran deeper than a mere shift in tactics. It signaled an end to labor's resistance to wage labor ("wage slavery") as well as to broad class-based politics; unions accepted liberal ideology along with liberal economics as the terrain in which they had to operate. "The very intensity of judicial repression... made the language of the law beckon as a framework within which to contend for relief. During these decades, labor relinquished a republican vocabulary of protest and reform for a liberal, law-inspired language of rights."[29] In the process of adapting to this terrain, however, labor also eventually helped reshape it. The courts' allegiance to liberal doctrines like "freedom of contract" led unions to argue that what was needed was "actual freedom of contract." "Trade unionists mined the fine radical veins of constitutional tradition," Forbath notes, drawing on the First and Thirteenth Amendments to try to legitimize collective action within the liberal framework.[30] (James Pope offers a fascinating look into this alternative constitutional world in his 1997 article "Labor's Constitution of Freedom." He describes how unionists in the early decades of the 20th century built legal interpretations that held antistrike laws and injunctions to be a violation of the Thirteenth Amendment's prohibition

[27] Ibid., 1177.
[28] Ibid., 1149.
[29] Ibid., 1235.

against involuntary servitude, and antipicketing laws to be a violation of the rights to speech and assembly protected by the First Amendment. They declared these laws unconstitutional and in some places endeavored to enforce that judgment through direct action. Pope details one such case, the strike by 10,000 coal miners against the Kansas Industrial Court Act of 1920.)[31] Unionists passed anti-injunction bills as part of this effort, which were, what else of course... struck down by the courts. But the language of "actual freedom of contract" would appear again, in the Wagner Act, and this time, it would stand.

The role of the labor movement in reshaping the law in this way is the subject of Karen Orren's 1991 book *Belated Feudalism*. But while Orren shares Forbath's view that labor helped reshape the law even as it was being shaped by it, she adds a new claim to this history. Her unique contribution to the discussion of turn-of-the-century labor relations is the contention that the intractable hostility of the courts to labor was based not in a fervent belief in laissez-faire economic doctrine but rather in feudal traditions governing the relations between masters and servants that were still embedded in common law. She reads the central and aggressive role of the judiciary as a "feudal remnant," an effort to continue to assert the dominant role of courts against legislative encroachment, to seal off labor relations from popular control, and to impose the absolute domination of employers over workers. The defense of this remnant coincided with the rise of the substantive due process doctrine that obstructed business regulation, and this coincidence obscures the distinct origins of labor jurisprudence. "The law of labor relations was on its own historical track," says Orren, and "it carried protection of business interests along for the ride."[32] Labor relations were not really incorporated into legislative politics and liberal development until the Wagner Act

---

[30] Ibid., 1203.
[31] James Pope, "Labor's Constitution of Freedom," *Yale Law Journal* (vol. 106, no. 4, January 1997, 941-1031).

finally brought "full legislative sovereignty" to American government.[33] Labor's role in this grew out of its voluntarism, out of the liberal emphasis it adopted to try to maneuver in a hostile climate. "The significance of the labor movement in American politics lies not in the preemption of a socialist state but in the construction of a liberal state."[34] Orren's claim places labor and the development of labor law at the heart of American political development.

Moving from the subject of labor's role in shaping the state back to the subject of the state's role in shaping labor is Victoria Hattam's 1993 *Labor Visions and State Power*. Her analysis shares much with Forbath's, particularly the central assertion that judicial nullification led to voluntarism. "After a series of electoral victories followed by judicial defeats, workers became disillusioned with political reform and began to bypass the state to negotiate with and protest against their employers directly."[35] Since this development depends on the peculiar role of the courts in the U.S., Hattam argues that the "unusual structure of the American state played a decisive role in shaping American labor strategy."[36] Her study also includes a second variable, labor ideology, that offers a refinement of the basic thesis. In the heterogeneous labor movement of the late 19th century, activists with different conceptions of class pursued different strategies and, crucially, had different experiences with the state. Those from the producerist camp (an ever smaller group as industrialization plowed on and wage labor increasingly dominated employment relations) did not translate their activism into a quest for permanent organization and collective rights, and their political efforts did not run afoul of the law. The trade union wing of the

---

[32] Karen Orren, *Belated Feudalism* (Cambridge: Cambridge University Press, 1991), 112.
[33] Ibid., 211.
[34] Ibid., 3-4.
[35] Victoria Hattam, *Labor Visions and State Power: The Origins of Business Unionism in the United States* (Princeton: Princeton University Press, 1993), 21.
[36] Ibid., 11.

movement, by contrast, sought to build permanent organization and structures; given their analysis of the irreconcilable conflicts of interest between workers and employers, they believed countervailing institutions were necessary. This program ran them headlong into clashes with the state, notably the courts. The empirical data in *Labor Visions and State Power* comes from an examination of conspiracy cases brought against unions (prior to the labor injunction, the conspiracy case was the main vehicle for judicial repression of labor activity). Hattam finds that in the second half of the century, these came increasingly to be seen as illegitimate by trade unionists (understandably, since courts were stretching the law to find ways to bar labor activity; Hattam reports one case in Pennsylvania where workers were arrested and charged with "threatening to use a brass band to intimidate strikebreakers").[37] For those labor activists who clashed with the courts over collective rights issues, then, the experience with the state was sufficiently negative that it led them to abandon political activity.

Melvyn Dubofsky looks at this same era with an eye toward the role of the *federal* government in labor relations, the subject of his 1994 book *The State and Labor in Modern America*. Dubofsky notes that prior to the 1870s, there was not much federal intervention of any kind in labor relations. But with the nationalization of the economy and the growing frequency and scale of labor unrest, the national government was increasingly drawn into the struggle in the last quarter of the century. He offers a vivid account of the role of federal troops in crushing labor insurgencies. Federal troops were called in usually because local law enforcement, like local communities in general, were often sympathetic to the strikers; troops were sent in response to employers' requests, or in response to governors' requests at the behest of employers. As for the role of the judiciary, Dubofsky stresses that it varied;

---

[37] Ibid., 150.

some judges would not tolerate peaceful strikes and boycotts while others allowed these. Nonetheless, he admits, the "overall pattern to judicial decisions... favored capital." More critically yet, "judges proved most adept at fashioning decisions that served to disarm workers of their most effective weapons of economic warfare."[38] Alongside the unambiguous federal repression of labor, Dubofsky also chronicles efforts by elites to "mollify labor once it had been adequately disciplined," for instance passage of the Erdman Act in 1898 (recognizing the legitimacy of railroad unions, banning yellow-dog contracts, and establishing voluntary arbitration boards) and the appointment of an industrial commission the same year to investigate capital-labor relations.[39] These actions coincided with continued judicial repression, however. Their purpose, Dubofsky explains, was to "shape a less radical trade unionism than that which has been personified by Debs and his ARU" (duly crushed by the full force of the state in the 1894 Pullman strike) and to "encourage responsible and conservative unionism."[40] Complete repression, officials felt, would only inflame workers; but gestures offering some conditional legitimate standing for unions, they thought, would tame labor.

Given the retreat by the turn of the century of the labor movement into a voluntarist philosophy and its abandonment of class-wide struggles, one would have to say that the effort to create a less radical, more conservative union movement was remarkably successful. That does not mean necessarily that it was the conciliatory gestures that achieved it rather than the raw repression, and on balance the latter seems the more plausible explanation by far. Hattam insists that the AFL of the 1880s and 1890s was "not simply a reactionary

---

[38] Melvyn Dubofsky, *The State and Labor in Modern America* (Chapel Hill: University of North Carolina Press, 1994), 24.
[39] Ibid., 32-33. Yellow-dog contracts were contracts that employers often forced workers to sign saying that they would not join a labor union; signing was a condition of employment.
[40] Ibid., 31.

organization seeking to protect the interests of skilled workers at the expense of unskilled labor"; indeed, she points out that the AFL had a more Marxian analysis of economic development and a more Marxian conception of class than did the Knights of Labor.[41] The AFL's class consciousness may indeed have been radical in one dimension, but it is impossible to ignore its other dimensions: racist, xenophobic, and exclusive. Shefter notes that efforts to exclude immigrants and blacks served politicians' needs because such proposals were "an easy way of winning votes among skilled and unskilled workers alike... .Thus," he points out, "racism was one of the terms in the accommodation organized labor sought to establish with the powers that be in twentieth century America."[42] "Pure and simple trade unionism," moreover, abandoned all but the most minimal of political action in favor of collective bargaining as the sole means for winning improvement in workers' lives. To a significant extent, then, the labor movement at the outset of the 20th century had been reduced to a narrow effort to fight for workers' wages and work conditions. This result was achieved by the unified effort of economic and political elites to force labor to retreat from any contestation of the social and economic parameters of the industrial economy.

The historical literature, while nuanced and varied in some of the details, presents a generally uniform picture of the central role of the state in shaping the strategic orientation of the U.S. labor movement at the close of the 19th century. This understanding of the centrality of the state connects this subject to two larger themes as well, both of which explicitly weave their way through much of this literature. The first is the focus in political science on "bringing the state back in"; some of the authors discussed here, like Tomlins and Dubofsky, are interested in establishing the relative autonomy of the state, but all of them clearly have illustrated the force of the state as an independent variable in shaping labor

[41] Hattam, 138.

institutions. The second larger theme is that of American exceptionalism. The questions, Why is there no labor party in the U.S.? and, Why is the American labor movement the peculiar way it is? have always been at the heart of the exceptionalism question. The role of the early franchise and especially the unique power and hostility of the American judiciary emerge here as contributing answers to that question.

The state was brought in as a third-party ally of employers— sometime literally, as when employers sought court injunctions against strikers, other times more generally, as when courts invalidated labor legislation— and the alliance of economic and political elites defeated every significant challenge to the status quo that labor activists mounted. Moreover, the determined and decisive opposition of the courts drove unions to abandon old strategies and to craft new ones directly in response to the legal constraints placed on them by the state (and the fact that these constraints were backed up by force). The state's decisive impact on the outcome of labor struggles was rooted in its role as the authoritative rule-maker in society; and both unions and employers sought to influence those rules. Most of the rules in question came in the form of court orders or court decisions; this "judge-made law," as it is often called, has the same constraining effect that legislative rules do. It barred unions from using their most effective weapons, and it also barred unions from changing the rules through labor legislation. Labor injunctions (think of them as ad hoc rules, but with the full power of the law behind them nonetheless) were issued at the behest of employers. This is one way that employers sought to influence the rules in their favor. Unions, meanwhile, sought to change the rules through legislative action; as we have seen, even where they succeeded, their efforts were ultimately defeated by judge-made law. Labor also sought to change the rules through it constitutional argument that wage labor without recourse to the

---

[42] Shefter, 159.

right to strike and the right to organize constituted involuntary servitude in violation of the Thirteenth Amendment.

Alongside these rule-making strategies, labor also pursued some rule-breaking strategies. Labor efforts to end the use of labor injunctions included both legislative attempts to abolish them (another rule-making strategy) and a sustained policy of defying them. "Principled disobedience to injunctions was official AFL policy from the late 1890's until the passage of the Norris-LaGuardia Act and beyond," reports Forbath. Moreover, he says,

> a widening campaign of massive and articulate defiance of the courts helped the labor movement win support for its exiled constitutional claims. Such defiance proved potent for two reasons. First, defiance provoked repression, and repression disturbed the consciences of lawmakers and reformers in ways that a less visibly coercive regime could not. Secondly, increasing defiance of increasingly frequent injunctions made sustained legal and constitutional arguments and protests an ever more common accompaniment of strikers' arrests. Such protests demonstrated that workers found the judge-made rules of the game not merely inconvenient but illegitimate. Lawmakers and reformers laid at the courthouse door a growing part of the blame for the ungovernability of the American industrial order.[43]

III. A revolution in labor law

It was ultimately the ungovernability of the American industrial order that gave rise to the shift in U.S. labor policy from repression to recognition and encouragement of unionization. It was the massive labor unrest of the 1930s that forced the government to act; by 1935, economic recovery and political stability required labor peace, and thus the Roosevelt Administration threw its support behind the Wagner Act. Passage of the act marked a remarkable sea change in the relation of the state to workers. For the first time in American history, the government had come out squarely on the side of workers. Even more astonishing was the Supreme Court approval of the act in 1937. Given the court's history of

hostility toward labor and its willingness to contort constitutional doctrine in whatever way was necessary to thwart union activity, not to mention its opposition to New Deal programs (the *New Yorker* commented in 1936 that court's new building had "fine big windows to throw the New Deal out of"), the *NLRB v Jones & Laughlin Steel Corp.* decision truly did constitute a "revolution in labor law," as Irving Bernstein put it.[44]

Section 1 of the National Labor Relations Act (NLRA, aka Wagner Act) declared "encouraging the practice and procedure of collective bargaining" to be "the policy of the United States." It spoke of the "inequality of bargaining power" between employers and "employees who do not possess full freedom of association or actual liberty of contract."[45] Section 7 of the act said, "Employees shall have the right to self-organization, to form, join or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection."[46] The language of Section 7 itself was not new; it had appeared in the Norris-LaGuardia Act, as well as the National Industrial Recovery Act— but without any enforcing language.[47] The NLRA's Section 8 provided enforcement of these rights. It prohibited employer interference with Section 7 rights; it outlawed company unions; it forbade discrimination against workers for union activity; and it required employers "to bargain collectively with the duly established representatives (unions) of their

---

[43] Forbath, 1214-1215.
[44] Quoted in Irving Bernstein, *Turbulent Years. A History of the American Worker 1933-1941* (Boston: Houghton Mifflin Company, 1970), 639. "The Revolution in Labor Law" is the title of chapter 13 of Bernstein's book.
[45] Quoted in Bernstein, 787.
[46] Quoted in Douglas Leslie, *Labor Law in a Nutshell* (St. Paul: West Publishing, 1992), 4.
[47] David Brody, "Labor Elections: Good for Workers?" *Dissent* (summer 1997), 72.

employees."[48] Section 9 of the law established the procedures by which workers could exercise their Section 7 right to self-organization.[49]

The Wagner Act put the federal government in the middle of struggles between workers and employers over unionization. It gave the state the role of deciding what forms of organization workers could have and how they could be established. The explicit intent (and effect) of the law was to encourage unionization and collective bargaining, and it was correctly hailed as a great victory for the labor movement. But the NLRA and the National Labor Relations Board (NLRB) it established to administer the new law were also sharply criticized from the outset. In addition to opposition from the business community and constitutional conservatives, the new law, which was supported by the Congress of Industrial Organizations (CIO), came under immediate attack from the AFL. Still wed to its voluntaristic philosophy, the federation was convinced that state regulation of labor relations was a dangerous thing, putting workers' fate in the hands of an entity that historically had shown itself to be extremely hostile to labor's interests. William Green, the president of the AFL at the time, went so far as to call the new labor board "a travesty on justice."[50] Debate over the role and function of the Wagner Act resurfaced in the 1980s. Tomlins' analysis of the NLRA, for instance, mirrors the AFL's concerns at the time of its passage:

> the act reconstituted collective bargaining, bringing this hithero private activity fully within the regulatory ambit of the administrative state... .The right [to organize and bargain collectively] was to be exercised, however, subject to the state's determination of how the public interest might best be served in the resolution of industrial controversies... .this would eventually come to mean in practice that the right to organize and bargain could be maintained only so far as the state conceived it to serve an overriding goal of industrial peace.

---

[48] Leslie, 5.
[49] Ibid.
[50] Quoted in Dubofsky, 152.

Unions, says Tomlins, were turned by the Wagner Act into "quasi-public instrumentalities whose function was to bargain within the parameters of a model of labor relations defined by a state agency."[51] Tomlins' theme throughout *The State and the Unions* is the "contingent legitimacy" of collective labor activity.

Dubofsky explicitly disagrees with Tomlins' conclusion that the most the American state ever gave workers was "a counterfeit liberty," though he shares Tomlins' view that the predominant goal of public policy makers was stability and social peace.[52] The Wagner Act was born, Dubofsky and Tomlins (and of course, many others) agree, out of the urgent need to restore industrial peace. Nevertheless, Dubofsky sees "a real as well as a counterfeit liberty."[53] State policy in the New Deal had "unintended consequences, which altered the balance of power between labor and capital." The reason this was so is because

> in contemporary democracies the voting rights possessed by all adults partly offset the preponderance of economic power held by capital. Elected officials could not simply serve the interests of a small minority, however influential, over those of a *mobilized* majority.[54]

This view is hardly unique to Dubofsky, and he himself cites six separate authors for it. One of the sources he does not mention but could easily have added to the list is Piven and Cloward's *Poor People's Movements*. Piven and Cloward argue that under conditions of electoral instability, the disruption created by mass movements can succeed in exacting concessions from ruling elites. This is exactly what happened in the case of the Wagner Act:

> [W]ith the workers' movement still unabated, and with violence by employers escalating, reluctant political leaders finally chose sides and supported labor's demands. The disruptive tactics of the labor movement had left them no other choice. They could not ignore disruptions so threatening to economic recovery and to electoral stability, and they could not repress the strikers, for while a majority of the electorate did not support the strikers, a substantial proportion did, and many

[51] Tomlins, 147.
[52] Ibid., 328.
[53] Dubofsky, 236.
[54] Ibid., 233.

> others would have reacted unpredictably to the serious bloodshed that repression would have necessitated. And so government conceded the strikers' main demand—the right to organize.[55]

Of course, in trying to quell labor unrest by conceding workers' demands, by channeling workers' grievances into a controlled form of representation and bargaining, the Wagner Act itself helped eliminate the political conditions that made its passage possible in the first place. Thus support for the act's goals of promoting collective bargaining and encouraging unionization was, paradoxically, undercut by the act's very success in achieving those goals. The NLRA's ability to facilitate worker self-organization was eroded almost from the minute it was first enacted— a point to which we shall return shortly.

But at its outset, the act, along with the labor board it created, truly was a vehicle for bringing unions to American workplaces, and it was a significant factor in the dramatic increase in union density in the 1930s and 1940s; union membership doubled from 1933 to 1937 and doubled again from 1937 to 1947. Union density, meanwhile, rose from 11.8% in 1933 to 31.8% in 1947.[56] Moreover, within a few years of its existence, the NLRB became the preferred route to unionization for workers, replacing the recognition strike. Until the *Jones & Laughlin* decision, the NLRB got relatively few cases. But once it looked like the law was there to stay, union resort to the board for enforcement against unfair labor practices (ULPs, i.e., those employer actions outlawed by Section 8 of the NLRA) skyrocketed.[57] Likewise, unions did not immediately turn to the NLRB to win recognition struggles, but in a matter of a few years this changed dramatically. In fiscal 1936, the board conducted 31 elections and card checks; in 1941, that figure was 2,568; in 1942, it was 4,212.[58] "The

---

[55] Frances Fox Piven and Richard Cloward, *Poor People's Movements. Why they Succeed, How they Fail* (New York: Vintage Books, 1979), 172-173.
[56] Tomlins, 252; see also Bernstein, 769.
[57] Bernstein, 647.
[58] Michael Goldfield, *The Decline of Organized Labor in the United States* (Chicago: University of Chicago Press, 1987), 90; Bernstein, 652-653.

representation procedure became the main route to union organization," notes Bernstein. "Even a reluctant AFL came to recognize this to its advantage."[59] Labor strategy shifted, in other words, in response to state policy. With labor relations now legislatively regulated and an agency set up to facilitate collective bargaining, voluntarism became "obsolete," as Bernstein observed.[60] A new era had begun, one in which regulation replaced repression, and labor responded accordingly by fitting its organizing quest to the procedural rules set up by the state.

Thus began a process in which labor transformed itself from primarily a protest movement into something more akin to an interest group. Once again the state sought to tame labor, to make it less radical and more conservative. The big difference in the New Deal era, of course, was that the price of being able to quiet labor was much higher for economic and political elites. At any rate, institutionalization and official legitimacy shifted labor tactics decisively away from rule-breaking. It looked for a while after the Wagner Act passed like labor could win playing by the rules because the rules had been rewritten to actually favor collective bargaining and unionization. The rules had also been written in a way that encouraged the growth of unions as bureaucratic entities invested more in stable relationships with employers than in dynamic relationships with their members. "By guaranteeing the union's security for as long as it was able to maintain stable collective bargaining relationships with employers, the Board's model encouraged the concentration of authority over the collective bargaining process in the hand of the international bureaucracy and limited the leverage of the local union member."[61] Dubofsky is surely right that the Wagner Act gave workers "a real as well as a counterfeit liberty," but his assertion that

---

[59] Bernstein, 653.
[60] Ibid., 777.
[61] Tomlins, 315. See also Piven and Cloward 1979, 155-172.

"labor surrendered nothing in the bargain" of the NLRA is absurd.[62] Labor surrendered its character as a disruptive social force.

IV. From the New Deal to a raw deal

The bulk of private sector labor relations is still regulated by the Wagner Act, but today the effect of the state's regulatory apparatus is nearly the opposite of what it was in 1935. What remains to be explained is, as David Brody put it, "how that law, intended by its authors to liberate workers, has ended up oppressing them."[63] Answering that question in anything but the most cursory of ways is beyond the scope of this study, but a brief overview follows here as background and context for the rest of this chapter, where we will look at the current state of the law and its role in the emergence of new organizing strategies.

The very early NLRB was clearly pro-labor, taking seriously both the new statute's language about "encouraging the practice and procedure of collective bargaining" and its insistence that the question of workers' self-organization into unions was strictly the workers' choice to make. The board took the position that employers had no business interfering in union elections. Brody reports,

> In the early Wagner Act years, the NLRB treated anti-union statements unequivocally as unfair labor practices. "In the final analysis," asserted its 1937 annual report, "most of this propaganda, even when it contains no direct or even indirect threat, is aimed at the worker's fear of loss of his job." Employers got the message. If you want to avoid trouble, a 1940 legal manual for employers advised, "Stay *completely neutral* regarding elections."[64]

---

[62] Dubofsky, 131.
[63] Brody 1997, 71.
[64] Ibid., 74.

Dubofsky similarly notes that early on, "in almost every case the board ruled against employers and for workers," adding that the hearing examiners and attorneys at the NLRB "acted almost as missionaries for worker rights and trade unionism."[65]

This situation did not last very long. The NLRB came under immediate and sustained attack from employers, the AFL and Congressional conservatives. The political climate grew increasingly less favorable to the labor movement after 1938. Bills to amend the Wagner Act and curb the board's power were introduced in 1939 and 1940. A Congressional investigation of the board was launched in 1939, showcasing months of negative testimony and culminating in a scathing report. "The NLRB," says Dubofsky, "felt the heat and reacted to it. It became far less aggressive in pursuing labor's rights."[66] President Roosevelt also felt the heat, and his appointments to the board beginning in 1939 were increasingly more employer-friendly. By the time the Taft-Hartley Act was passed in 1947, the labor rights were in full retreat. In fact, many of Taft-Hartley's provisions were foreshadowed by NLRB or court decisions in the years leading up to what unions called the "slave labor act."[67]

---

[65] Dubofsky, 149, 150.

[66] Ibid., 160.

[67] Brody (1997) reports, for instance, that the NLRB ruled in 1939 in *Cudahy* that an employer could require an election to determine union representation. The Wagner Act had left the method of determination open, giving discretion to the board to use "any other suitable method" in place of an election. *Cudahy* eliminated that discretion, and then Taft-Hartley sealed it by making an election mandatory for certification; 74. The Supreme Court, meanwhile, gave employers permission to permanently replace strikers in economic strikes in *NLRB v. Mackay Radio* (1938), outlawed the sit-down strike in *NLRB v. Fansteel Metallurgical Corp.* (1939), and began to recognize employer speech rights in *NLRB v. Virginia Electric & Power* (1941). Tomlins asserts, "The Taft-Hartley Act...proved much less of a break with the past than has usually been assumed"; 251. David Plotke makes a similar claim in *Building a Democratic Political Order* when he says, "Taft-Hartley did not lead to a sweeping reduction in union power." Plotke's point is that labor's opponents wanted far more drastic changes, and while the act did curtail labor activity, it also "served to further institutionalize the new unions" and the new order of labor relations; (Cambridge: Cambridge University Press, 1996), 257, 256. In this context it is also worth noting that while the Supreme Court acted to narrow the scope of permissible union activity in the post-Wagner decade, it also upheld many labor rights. In *Senn v. Tile Layers' Union* (1937) the court held peaceful picketing to be lawful for the first time. In *Apex Hosiery Co. v. Leader* (1940), the court reversed the long-standing practice of using the Sherman Act to curtail union activity. Together with the *Jones & Laughlin Steel* decision upholding the Wagner Act, these decisions signaled that the era of judicial law-making and relentless hostility to labor were truly over.

Taft-Hartley, which amended the Wagner Act, was a significant blow to labor, and it banned many of labor's most effective weapons. Sympathy strikes and secondary boycotts were both outlawed, as were strikes by federal employees; certain other strikes were subject to mandatory 60-day "cooling-off periods," and the president was given new powers to intervene in strikes which endangered the national health or safety. The closed shop was prohibited, and states were given the right to enact "right-to-work" laws.[68] Employers were given the right to insist on an NLRB election in order to determine whether a shop would become union or not. Employers, moreover, were given "free speech" rights; language was added to the law that stated:

> The expressing of any views, argument, or opinion, or the dissemination thereof, whether in written, printed, graphic, or visual form, shall not constitute or be evidence of an unfair labor practice under any provision of this Act, if such expression contains no threat of reprisal or force or promise of benefit.[69]

Language was also added defining a new category of unfair labor practices (ULPs), ULPs committed by *unions*, and stating that the act's purpose was to protect *individual* employees in their rights against both unions and employers.[70] The cumulative effect of these changes (besides curtailing labor power, of course), and in fact their intent, was to shift the role of the state in U.S. labor policy from one of promoting collective bargaining to one of serving as a 'neutral' guarantor of rights in a contest between equal parties, unions and employers. That unions and employers could never be equal parties on the shop floor— where workers depend on only one of these parties to feed and house their families— was of course the point of the Wagner Act and the reason it was written to exclude any concept of employer "rights" in the establishment of workers' right to self-organization. Taft-Hartley abandoned

---

[68] Piven and Cloward 1979, 169.
[69] Quoted in Brody 1997, 75.
[70] James Gross, *Broken Promise: The Subversion of U.S. Labor Relations Policy, 1947-1994* (Philadelphia: Temple University Press, 1995) 2, 3.

this insight along with the promotion of collective bargaining, and in introducing the concept of employer rights also left open the possibility of future expansion of such rights at the expense of workers' right to organize. While grafted onto the Wagner Act as an amendment, Taft-Hartley's fundamental purpose is at odds with that of the original act.[71]

In prohibiting sympathy strikes and secondary boycotts, Taft-Hartley rewrote the rules to keep workers from being able to draw on a bigger web of interdependent relationships and increase their leverage over employers that way. In doing so it stripped unions of class-based forms of action and forced them into narrow struggles limited to the enterprise level. In that regard, post-war labor policy had common roots with the 19th century efforts to force labor to abandon class-wide economic and political programs. This characteristic of the Taft-Hartley Act manifested itself elsewhere in post-war labor relations as well. Walter Reuther and the UAW, for instance, sought to make labor part of the discussion and planning of post-war reconversion and economic planning. They explicitly tied their bargaining proposals to larger national interests. But these efforts to broaden collective bargaining into the realm of economic policy were, as Nelson Lichtenstein writes, "decisively repulsed" by both employers and the Truman Administration.[72] Union demands during the 1946 GM strike were denounced by the company as "European-style socialism," and the strike settlement "ended left-liberal hopes that organized labor could play a direct role in reshaping class relations for the society as a whole. Thereafter," according to Lichtenstein,

---

[71] Though not directly relevant to the subject here, for the sake of accuracy I should note that the Taft-Hartley Act also required unions to sign loyalty oaths in order to avail themselves of the protections of the labor board. These anti-Communist oaths became a pretense to intensify the purge of the left within the labor movement, which had begun earlier, and which gutted the labor movement of many of its most creative, dedicated and bold organizers.

[72] Nelson Lichtenstein, "From Corporatism to Collective Bargaining: Organized Labor and the Eclipse of Social Democracy in the Postwar Era," in Steven Fraser and Gary Gerstle, eds., *The Rise and Fall of the New Deal Order* (Princeton: Princeton University Press, 1989), 133.

> Reutherite social unionism gradually tied its fate more closely to that of industry and moved away from a strategy that sought to use union power to demand structural changes in the political economy. Instead the UAW worked toward negotiation of an increasingly privatized welfare program...[73]

At the bargaining table as well as in the legislative arena, then, labor's opponents succeeded in restricting labor's influence and resources. In keeping unions from being able to enlist broad sections of society or engage issues of broader social interest, economic and political elites succeeded in limiting labor power in two interrelated ways. First, they limited the actors and relationships labor could draw into its struggles, thus diminishing its leverage options. And second, they cut labor struggles off from other, broader social struggles, resulting in political isolation of the labor movement and making it easier for opponents to paint labor as a "special interest."

If the immediate effect of Taft-Hartley was to curb labor power and circumscribe its domain, one of the long-term effects was to deprive U.S. labor policy of any genuine coherence or consistency. That is so, as James Gross persuasively argues in *Broken Promise* (1995), because the superimposition of Taft-Hartley's language on the Wagner Act's put labor policy "at cross-purposes with itself."[74] As amended, the statute states *both* that its purpose is to promote collective bargaining *and* that its purpose is to protect individual employees' rights and serve as a neutral guarantor of those rights. The consequence has been that the NLRB can shape labor policy in two very different directions based on which of these contradictory purposes it chooses to emphasize. Its inclination to lean in one direction or the other, of course, depends on its composition, which is subject to executive appointment and Senate confirmation. "The national labor policy is in a shambles in part because its meaning seems to depend primarily on which political party won the last

---

[73] Ibid., 132, 133.
[74] Gross, 272.

election," laments Gross at the end of his thorough study of the twists and turns in labor policy from 1947 to 1994.[75] But even Democratic appointees, as was evident in Roosevelt's own appointments after 1939, are not necessarily inclined to interpretation guided by the original Wagner language. In fact, with the exception of the NLRB under Frank McCulloch's chairmanship during the Kennedy-Johnson era, the board's general drift since 1939 has been towards curtailing union rights and enhancing employer rights. The result, unsurprisingly, is that it has become much, much harder for unions to organize— harder for workers to assert their *collective* rights.

When Ronald Reagan fired striking air traffic controllers in 1981, it looked like labor's fortunes could not sink any lower. Throughout the 1970s, employer opposition to unions had increased. In response to the first effects of what we now call globalization, companies had begun more and more to hire union-busting firms, commit unfair labor practices to defeat organizing drives, and to orchestrate decertification efforts of existing unions.[76] When Reagan fired the PATCO workers, this move was widely interpreted by business and labor alike as a declaration that it was open season on workers. Companies everywhere saw it as a green light for their efforts to maintain or regain union-free workplaces. Amidst deindustrialization and hard times for workers, it did not look like things could get worse for labor. Then Ronald Reagan nominated Donald Dotson to be the chairman of the NLRB, and under his tenure things got markedly worse. Dotson's hostility

---

[75] Ibid., 275.

[76] These developments have been documented by numerous authors. See, e.g., Barry Bluestone and Bennett Harrison, *The Deindustrialization of America* (Basic Books, 1982); Thomas Edsall, *The New Politics of Inequality* (New York: W.W. Norton, 1984); Michael Goldfield, *The Decline of Organized Labor in the United States* (Chicago: University of Chicago Press, 1987); David Gordon, *Fat and Mean* (New York: Free Press, 1996); and Frances Fox Piven and Richard Cloward, *The Breaking of the American Social Compact* (New York: New Press, 1997).The shift in employer strategy towards hostile confrontation was so marked that it led then-UAW President Douglas Fraser to issue a now-famous 1978 statement in which he accused the business community of having "chosen to wage a one-sided class war"; quoted in Gordon, 205.

to unions was substantial, and resulted in a systematic shift in board decisions towards the rights of management.[77] This included 29 reversals of major board doctrines in only two years.[78] "Every single rule change announced by the Dotson Board has redounded to the employers' benefit," one lawyer observed in 1985.[79] Under Dotson, the NLRB deregulated representation election campaigns, allowing employers greater freedom to oppose unionization; conversely, the board constricted the actions allowed workers as "concerted activity" under the statute. The Reagan board also diminished management obligations to bargain, exempting some decisions as too important to a business to be subject to collective bargaining and others as too unimportant to be subject to bargaining.[80] At Dotson's direction, the NLRB also cut by more than 40% the number of ULP cases decided each month, contributing to a huge backlog of cases, which some observers saw as a deliberate effort to frustrate worker aspirations.[81] In the first two years of Dotson's term there was "a 300% increase in the percentage of decisions dismissing complaints against employers, and almost a 40% decrease in the percentage of decisions dismissing complaints against unions."[82] In a 1985 article subtitled "The Psychopathology of Everyday Life," James Coppess and Sarah Fox went so far as to argue that "the Dotson Board is not about articulating a principled conservative framework for labor relations so much as

---

[77] In 1980, Dotson wrote that collective bargaining was often "labor monopoly, the destruction of individual freedom, and the destruction of the marketplace as the mechanism for determining the value of labor." In 1983 he told a joint congressional committee, "This law [Taft-Hartley]...gives people the right to refrain from union membership. There are people who seem to think that it is unlawful for an employer not to want a union in his business, and there are people who seem to think that there is something wrong with somebody who doesn't want to be a union member, but our law protects these people as well"; quoted in Gross, 252, 253.
[78] Gross, 256.
[79] Victoria Bor, "Dotson Board Reversals of Prior NLRB Precedent," in AFL-CIO Lawyers Coordinating Committee, *The Labor Law Exchange: The Dotson Board's Decisions 1983-1985* (No. 4, 1985), 9.
[80] Gross, 262.
[81] Ibid., 253-254.
[82] AFL-CIO Lawyers Coordinating Committee, *The Labor Law Exchange: The Dotson Board's Decisions 1983-1985* (No. 4, 1985), 7.

demonstrating to employees the futility of turning to the NLRB for protection of their rights... .ordinary day-in and day-out cases that come before the Board... [reveal] a pattern of fact-twisting, rule-misapplication, and procedural pettyfogging that exhibits disdain for every aspect of employee rights given by the Act."[83]

Donald Dotson left the NLRB in 1987, but there have been very few reversals of board decisions made during his four-year crusade to demolish union rights. One of the only cases to substantially modify a Dotson board ruling, a case concerning union access to workers on employer private property, was itself reversed by the Supreme Court in the 1992 case *Lechmere, Inc. v. NLRB.*[84]

As an illustration of how far labor policy has shifted since the passage of the Wagner Act, consider the employer free speech issue. As noted above, the original act did not recognize any legitimate role for employers in workers' decisions about self-organization, and the early NLRB understood that opinions from those who sign paychecks are inherently coercive to those dependent on the paychecks, and thus disallowed anti-union comments by employers. In employers' efforts to roll back the new rules governing industrial relations, they framed their argument for the right to fight unions as a battle for free speech, an ever popular cause in both popular and judicial traditions in the U.S. This spin succeeded and by 1947 was formally codified in the Taft-Hartley Act. In the 50+ years since then, NLRB and judicial interpretation of the issue has turned on what constitutes a "threat of reprisal or force or promise of benefit," which the revised statute bars. In the 1950s, the board devised a distinction between threats and promises, to be disallowed, and prophecies and predictions, which it allowed. It also created an employer right to resist and obstruct

---

[83] James Coppess and Sarah Fox, "Decisions by the Dotson Board in Nonprecedent-Setting Cases: The Psychopathogy of Everyday Life," in AFL-CIO Lawyers Coordinating Committee, *The Labor Law Exchange: The Dotson Board's Decisions 1983-1985* (No. 4, 1985), 27.

unionization, thus sanctioning active employer efforts to defeat unions.[85] Originally, the board had ruled that captive audience meetings— mandatory meetings held by employers requiring workers to listen to antiunion speeches— were *per se* a violation of the act. After Taft-Hartley, that position was modified to allow such meetings on the condition the union was given equal time and access to present its side of the story; the equal access rule, though, was soon dropped. Similarly, interrogation of employees about their union activities went from an illegal to a legal practice.[86] These two forms of communication are to this day the most common means by which employers try to 'convince' workers to oppose unionization.[87] Under Dotson's chairmanship, it became even harder to get employer speech deemed an unfair labor practice. Employee interrogations, which had been ruled inherently coercive again during John Fanning's tenure, were once more legalized. Meanwhile, the content of what employers could say to workers during a union campaign was relaxed. Gross notes,

> To the Dotson Board, employer statements to employees associating unionization with plant closings, strikes, unprofitability, and layoffs were merely accurate communications of the "economic realities" of unionization and collective bargaining... .The Reagan Board also found no violation when a supervisor told a worker that wearing a union button "may be hazardous to your health" or when a foreman asked a union supporter why he was wearing that "chicken shit badge."[88]

"The cumulative effect" of these rulings, one American Bar Association official noted at the time, "encourages management to fight organizational efforts 'to the hilt.'"[89]

---

[84] Gross, 269.
[85] Ibid., 109, 110.
[86] Ibid., 104-110.
[87] Meanwhile, the NLRB has shown a tendency towards a double standard when it comes to employer and union behavior. Restrictions on union picketing established in the 1950s offer an example: The board "treated employer speech and union speech differently. These Eisenhower Boards essentially ignored the effect of the context of the employer's speech—the setting in which it was made and the entire course of employer conduct of which it was a part—while treating union picketing as inherently coercive, precisely because of its setting"; Gross,134.
[88] Gross, 257-258.
[89] Quoted in Gross, 258.

"Employers often drown workers in a tidal wave of predictions about the calamities that will befall any workplace so unwise as to unionize," explains union lawyer Brent Garren. "The incessant pounding of captive audience meetings and one-on-one meetings has nothing to do with a rational exchange of opinions in the free marketplace of ideas, but is intended to intimidate."[90] Garren cites a 2000 case in which the administrative law judge discussed the employer's captive audience meetings, which he then went on to find completely lawful:

> If phrased in terms of war, [the company's] response was equivalent to America's B-52 carpet bombing of the Iraqi front line forces at the 1991 opening of 'Desert Storm' in the Persian Gulf War. As the Iraqis stumbled from their trenches begging the advancing United States soldiers to accept their surrender, so too, figuratively, the [company's] employees, shell shocked from the long series of verbal "carpet bombing" speeches and videos, would have stumbled toward the voting booths, begging for the chance to vote against the Union.... This is not to say that the speeches and videotapes ... constitute a threat ...[91]

Thus has U.S. labor policy moved from prohibiting employer anti-union statements as inherently coercive to finding the verbal carpet bombing of employees non-threatening.[92]

There is probably no better example than the evolution of the employer free speech doctrine of Piven and Cloward's point about the central role that rule-making plays in power struggles. NLRB rulings on the issue have defined how and how much employers' contributions— control over the physical workplace and worktime, as well as the basic provision of wages— can be mobilized by them in their effort to keep unions out. Employers and unions have both fought continuously to change these rules; each new case that goes before the board is a microcosm of struggle over the rules of the game. The same is true for

---

[90] Brent Garren, "The High Road to Section 7 Rights: The Law of Voluntary Recognition Agreements," paper presented at the American Bar Association annual conference (San Francisco, August 7-12, 2003), 8.
[91] *Parts Depot, Inc.*, 332 NLRB No. 64 (2000), quoted in Garren 2003, 8.
[92] On this subject, see also Alan Story, "Employer Speech, Union Representation Elections, and the First Amendment," *Berkeley Journal of Employment and Labor Law* (vol. 16, no. 2, 1995), 356-457.

dozens of other aspects of the law. The contest over the rules also takes place through attempts by both sides to influence NLRB appointments. It also, sometimes, is expressed in direct attempts to change the law. For many years after the passage of Taft-Hartley, repeal of the "slave labor act" was part of organized labor's legislative agenda. In 1978, an attempt by unions to enact labor law reform was defeated. Late in 2003, a new labor law reform bill was introduced (more on this below).

The Wagner Act and its amendment by the Taft-Hartley Act gave rise to the system of industrial relations known as "industrial pluralism." Through it, labor struggles were channeled into an administrative system centered on collective bargaining and were largely sealed off from political processes.[93] Labor made some efforts to resist this framework, such as during the 1946 GM strike, but these faded away fairly quickly as unions found institutional stability within this system and fierce resistance outside of it. The post-war system of industrial governance once again pushed labor away from broad class-based action, and by devolving labor-management conflict resolution to the smallest unit, the individual shop with its individual collective bargaining agreement, it also reinforced the decentralized structure of the labor movement. The walling off of labor relations from broader social and economic questions, together with the withdrawal of the threat of disruptive labor unrest that came with the institutionalization of conflict, contributed to the weakening of labor's political position. Labor's declining political fortunes, in turn, left it largely unable to fend off the unfavorable development of labor law that has contributed to the current crisis in organizing. Meanwhile, labor's decentralized structure has left it more vulnerable to this development, both because it has turned the recruitment of virtually every single new member into a pitched battle at the enterprise level and because it has deprived

labor of the capacity to mount a coordinated political campaign to change the law.[94] The dismantling of broad class-based unionism happened, in other words, through the creation of a decentralized collective bargaining system as well as through the outright prohibition of certain tactics like the sympathy strike.

The role of the state in molding the shape and fate of the labor movement is thus profound; it goes deeper than the effects of the erosion of labor rights under the law to the structure of labor institutions and their ability to challenge the status quo. Labor is legally and structurally inhibited from organizing through broad political or economic action, forcing it to organize shop by shop. Shop-by-shop organizing, in turn, is made far more difficult by trends in the development of the law and the increase in employer opposition.

V. What is to be done?

"Core labor rights are systematically violated in the United States," a 2000 study of U.S. labor relations by Human Rights Watch found.

> Workers' freedom of association is under sustained attack in the United States, and the government is often failing its responsibility under international human rights standards to deter such attacks and protect workers' rights. ... In a system replete with all the appearance of legality and due process, workers' exercise of rights to organize, to bargain and to strike in the United States has been frustrated by many

---

[93] See Katherine Van Wezel Stone, "The Post-War Paradigm in American Labor Law," *Yale Law Journal* (Vol. 90, No. 7, Jun., 1981), 1511-1580.

[94] See Ben Day, "Why Organizing Won't Work: A Radical Politics for American Labor," manuscript (an abridged version of this paper is forthcoming in *Working USA*; the original is available from the author at bd66@cornell.edu). Bringing a comparative perspective to the study of union decline in the U.S., Day argues that the European experience suggests that density and union success are not best explained by the variables Americanists tend to focus on (external factors such as economic change and labor law, internal factors such as union effort) but rather by "the level at which labor market institutions, such as bargaining, are centralized"; 23. I believe the comparativist and Americanist explanations are compatible in that the absence of centralized labor market institutions leaves unions more vulnerable to the effects of the various causes we Americanists tend to list (as I've indicated in the text above). One could treat the degree of centralization as the independent variable and the economic and legal factors as intermediate variables.

> employers who realize they have little to fear from labor law enforcement through a ponderous, delay-ridden legal system with meager remedial powers.[95]

It is the combination of employer resistance and current labor law that bars workers from exercising their right to organize. Employer opposition takes both legal and illegal forms, and in both cases the law fails to deter violations to associational rights that result from employer actions. The free speech example in the previous section demonstrates the problem of legal employer opposition. That same pattern of wide latitude in permissible employer action and a lack of equal access or redress by unions is repeated in dozens of other aspects of the law. In a speech given at the American Political Science Association (APSA) annual meeting in 2003, AFL-CIO President John Sweeney summed up the unfair playing field on which unions compete with employers in NLRB elections:

> What would it be like if you were a candidate for elective office— school board, city council, Congress, even president— and the election were run like a union representation election? How would you recruit supporters to knock on doors for you if they knew they could lose their jobs in retribution, or be denied promotions or overloaded with work, or be harassed or spied upon at work? What would happen if you couldn't have a voter list until six weeks before the election after your opponent had been working one for months? How would you get your message across if voters were required to watch television ads vilifying you for several hours a day, while you were forced to campaign secretly, door-to-door, after dark? How could you win if the media reported that precincts voting for you would be devastated economically, with *everyone* losing their jobs? What if your opponent could just delay the election for weeks and months because you had the early momentum? What if the election were held in your opponent's headquarters and voters had to file by the glaring stares of officials who control their jobs? And what if you won, only to find the ballots could be impounded and the outcome delayed by years and years of litigation? Those are the de facto ground rules for union elections in America, and I venture to say that if former President Jimmy Carter were asked to monitor such an election in a third-world country, he'd be on a plane and out of there in a heartbeat.[96]

With one exception (retribution for union support) these "ground rules" Sweeney describes are all *legal* means employers have of fighting off unionization, and they are almost

---

[95] Human Rights Watch, *Unfair Advantage. Workers' Freedom of Association in the United States under International Human Rights Standards* (New York: Human Rights Watch, 2000), 7, 8, 16.
[96] John Sweeney, speech to the American Political Science Association (August 30, 2003), 4-5.

universally used. Captive-audience meetings— like the ones the administrative law judge in the *Parts Depot, Inc.* case likened to carpet bombing— are used by employers in 92% of election campaigns.[97]

In addition to these legal tactics, employers routinely resort to additional, illegal tactics. The "epidemic of employer unfair labor practices" since the 1980s has been well documented.[98] Among the illegal tactics employers resort to, none is more devastating than firing workers for union activity. The penalty for such illegal dismissals, which the AFL-CIO reports happen in a quarter of all campaigns, is simply re-instatement with back pay (minus interim earnings).[99] But the real catch is that it typically takes several *years* before these cases are decided and workers win their jobs back, long after the intended effect of chilling an organizing drive has done its job. That makes the "right" to organize cold comfort— and the advantage to employers of violating the law obvious. Overall, unions file unfair labor practice (ULP) charges in 98% of all union election campaigns, and anti-union law firms routinely advise their clients to break the law.[100] The penalties for unfair labor practices are so minimal that they fail almost completely to have any deterrent effect; in many cases, the penalty is simply posting a notice in the workplace admitting the illegal conduct. Furthermore, employers take systematic advantage of the massive delays in getting cases adjudicated, making the law even less protective of workers. Commenting on this situation,

---

[97] AFL-CIO issue brief, *The Silent War: The Assault on Workers' Freedom to Choose a Union and Bargain Collectively in the United States* (June 2002), 2.
[98] Brent Garren, "When the Solution is the Problem: NLRB Remedies and Organizing Drives," *Labor Law Journal* (Number 51, 2000), 76; see also Gross, 277.
[99] AFL-CIO issue brief, 2.
[100] Richard Bensinger, "When We Try More, We Win More: Organizing the New Workforce" in JoAnn Mort, ed., *Not Your Father's Labor Movement. Inside the AFL-CIO* (New York: Verso, 1998), 36.

Human Rights Watch said, "a culture of near-impunity has taken shape in much of U.S. labor law and practice."[101]

Employers break the law because doing so *works* as a strategy for avoiding unionization.[102] The link between employer violation of the law and the defeat of union campaigns has been well documented.[103] The assessment of the law's failure as the underlying cause of aggressive employer campaigns and the decline of union organizing success is near universal. "The practical effect of the law is to deny workers the rights the law says they have."[104] "Labor law has been rendered meaningless."[105] "In its current form, the National Labor Relations Act serves to impede union organizing. Particularly problematic are NLRB policies that allow employers to wage no-holds-barred antiunion campaigns."[106] "The law enacted to promote collective bargaining now destroys collective bargaining."[107] The increased employer hostility beginning in the 1970s and the abysmal state of the law are the primary reasons unions have not been able to organize more workers, and the inability to organize in sufficient numbers to keep up with economic expansion and the shift towards non-union sectors has resulted in a virtual free fall in union density for the last

---

[101] Human Rights Watch, 10.
[102] This rule-breaking—not by a subordinate group constrained by the rules but by a dominant group that already has the advantage within the rules—falls outside the behavior predicted by Piven and Cloward's model. The reason is that the additional benefits of breaking the rules (increasing employers' chances of defeating unions) outweigh the penalties for doing so.
[103] Garren 2000, 77; Bensinger, 36; see also Sheldon Friedman, Richard Hurd, Rudolph Oswald, and Ronald Seeber, eds., *Restoring the Promise of American Labor Law* (Ithaca: ILR Press, 1994).
[104] David Brody, "Section 8(a)(2) and the Origins of the Wagner Act," in Sheldon Friedman, Richard Hurd, Rudolph Oswald, and Ronald Seeber, *Restoring the Promise of American Labor Law* (Ithaca: Cornell ILR Press, 1994), 33.
[105] David Moberg, "Can Labor Change?" *Dissent* (winter 1996), 17.
[106] Richard Hurd and Joseph Uehlein, "Patterned Responses to Organizing: Case Studies of the Union-Busting Convention" in Sheldon Friedman, Richard Hurd, Rudolph Oswald, and Ronald Seeber, eds., *Restoring the Promise of American Labor Law* (Ithaca: Cornell ILR Press, 1994), 61.
[107] Ellen Dannin and Terry Wagar, "Impasse and Implementation—How to Subvert the National Labor Relations Act," *Working USA* (vol. 4, no. 2, fall 2000), 78.

three decades. Private sector union density is now lower than it was before the Wagner Act was passed.

To call this situation a crisis for the labor movement is perhaps an understatement. Yet a general acknowledgement within labor's ranks of the extent of the problem was slow in coming. The tone was set at the top, where then AFL-CIO President Lane Kirkland was so inactive that a spoof supermarket tabloid headline mocked, "Lane Kirkland is still alive!" But while the federation may have been "gripped by a Breshnevian torpor," as one observer put it, there were signs from below that complacency was giving way to alarm and alarm was generating a new drive to address the problems.[108] The late 1980s saw the emergence of several significant union drives that sought to create new organizing models to end run the problems of the NLRB apparatus. The "Harvard model," for instance, emerged from the 17-year but ultimately successful union drive among Harvard's clerical and technical workers; it focused on building organization, emphasizing one-on-one organizing and eschewing all literature on the theory that without literature, union supporters would *have* to talk to their co-workers to win them over.[109] In the language of interdependent relationships, this model built power by building a really strong collective actor out of the workforce, in order to have the maximum capacity to use and leverage the contribution of their labor. The union also reached out to community allies and other unions. Meanwhile SEIU pioneered a new kind of strategy with its Justice for Janitors campaign. Instead of focusing on the individual cleaning contractors that employed the janitors, the union aimed its campaign at the building owners;

---

[108] Harold Meyerson, "A Second Chance: The New AFL-CIO and the Prospective Revival of American Labor," in Jo-Ann Mort, ed., *Not Your Father's Union Movement* (London: Verso, 1998), 6.

[109] Full disclosure: I worked as a volunteer on the Harvard campaign during its last two years, 1987-1988. See also John Hoerr, *We Can't Eat Prestige. The Women Who Organized Harvard* (Philadelphia: Temple University Press, 1997); and "Women's Ways of Organizing. A Conversation with AFSCME Organizers Kris Rondeau and Gladys McKenzie," in *Labor Research Review* (vol. X, no. 2, fall/winter 1991/1992), 45-59.

in this way they cut off at the pass the problem of owners simply switching cleaning companies. "J4J" as it is still known was also an early industry-wide campaign that decided to abandon NLRB elections.

In addition to these new organizing models, labor also engaged several defensive battles with fierce determination. Strikes at Eastern Airlines and the Pittston Coal Company in 1989, and at the New York Daily News in 1990 were fought with bold tactics and renewed solidarity both inside and outside the labor movement. During the Pittston strike, miners and their supporters took over one of the company's plants and carried out a sustained civil disobedience campaign by blocking roads, all while defying court orders and fines running into the millions. Then United Mine Workers (UMWA) President Richard Trumka and the still-alive Lane Kirkland also joined a blockade of the courthouse from which the injunctions were flowing.

By the time Sweeney, Trumka and Linda Chavez-Thompson ran for the top offices at the AFL-CIO in 1995, a new urgency permeated significant parts of the labor movement and there was widespread agreement that new organizing had to be labor's top priority. The New Voice campaign was the result of this movement from below, and their victory in turn fueled that movement. In the eight years since then, organizing has been the main focus of innovation, new resources, structural changes and intellectual as well as strategic discussion in the labor movement. This is not to say that all or even most unions have translated a rhetorical commitment to increased organizing into an actual effort to carry it out, but that the most strategic and creative thinking in labor circles has centered on the question of how to organize under the unfavorable conditions unions currently face.

This energy is also reflected in a proliferation of articles and books, mostly by practitioners and sympathetic academics and journalists, about labor's obstacles and

strategies. There are at least five edited volumes that fall in this category: *Organizing to Win. New Research on Union Strategies* (edited by Kate Bronfenbrenner, Sheldon Friedman, Richard Hurd, Rudolph Oswald and Ronald Seeber, 1998), *Rising from the Ashes? Labor in the Age of "Global Capitalism"* (edited by Ellen Meiksins Wood, Peter Meiksins and Michael Yates, 1998), *Not Your Father's Union Movement* (edited by Jo-Ann Mort, 1998), *Which Direction for Organized Labor?* (edited by Bruce Nissen, 1999), and *Central Labor Councils and the Revival of American Unionism* (edited by Immanuel Ness and Stuart Eimer, 2001); there is also Dan Clawson's most recent book, *The Next Upsurge* (2003). There are as well dozens of journal articles. Much of this literature focuses on "best practices" and examples of successful campaigns; there is discussion of day-to-day organizing tactics and strategies that are effective in reaching out to new constituencies (particularly immigrants) as well as involving existing members; a great many of these articles emphasize connections to allies outside the labor movement as well as within it.

The work of Kate Bronfenbrenner and her colleagues at Cornell University is worth singling out because so many practioners in the field have said that they find it useful; Bronfenbrenner is easily the most recognized academic name among unionists. She has done several quantitative studies on union organizing tactics. The most recent study confirms her and her colleagues' earlier findings that union tactics in NLRB organizing campaigns matter significantly in determining union success. The 2003 study examines 10 "comprehensive union strategies," ranging from "adequate and appropriate staff and financial resources" to "creative external pressure tactics."[110] Each additional tactic used increases union success by 34%.[111]

---

[110] Kate Bronfenbrenner and Robert Hickey, "Blueprint for Change. A National Assessment of Winning Union Organizing Strategies" (AFL-CIO Organizing Department, 2003), 18.
[111] Ibid., 36.

> Win rates increase dramatically for each additional tactic used, starting at 32 percent for no comprehensive organizing tactics, and then increasing to 44 percent to one to five tactics, 68 percent for more than five tactics, and 100 percent for the 1 percent of the campaigns where unions used eight tactics.[112]

In a way this work quantifies the increased leverage gained from expanding use of the web of social interdependencies. The ten measures it uses focus on building both internal solidarity (like the Harvard model) and external support. One striking conclusion that Bronfenbrenner and others have put forth is that "union tactics as a group matter more than employer tactics in determining union success in NLRB certification election campaigns."[113]

There is some overlap in this literature with a second type, this one dealing with questions of diversity, union culture and structure, inclusiveness, and union democracy; and with the connection of these issues of accountability and representation to the prospects for renewed organizing.[114] Part of the discussion also involves questions of "social movement unionism," though this term is rarely defined and sometimes simply serves as a foil to the now universally denounced model of "business unionism." Unionists and writers talking about social movement unionism are also engaging questions of the relationship between movements and institutions and the relative success of either in furthering workers' interests.[115]

---

[112] Ibid., 23.
[113] Kate Bronfenbrenner and Tom Juravich, "It Takes More than House Calls: Organizing to Win with a Comprehensive Union-Building Strategy," in Kate Bronfenbrenner, Sheldon Friedman, Richard Hurd, Rudolph Oswald and Ronald Seeber, *Organizing to Win*. (Ithaca: ILR Press, 1998), 33.
[114] See, e.g., Ray Tillman and Michael Cummings, eds., *The Transformation of U.S. Unions* (Boulder: Lynne Rienner Publishers, 1999); Bill Fletcher and Richard Hurd, "Is Organizing Enough? Race, Gender and Union Culture," *New Labor Forum* (no. 6, spring/summer 2000), 59-69; Sid Shniad, "Restructuring Won't Happen Top-Down," *Labor Notes*, http://www.labornotes.org/archives/2003/01/m.html (January 2003, viewed December 11, 2003).
[115] Kim Moody is probably the best representative of advocates of social movement unionism; see, e.g., *Workers in a Lean World* (London: Verso, 1997); and "American Labor: A Movement Again?" in Ellen Meiksins Wood, Peter Meiksins and Michael Yates, eds., *Rising from the Ashes? Labor in the Age of "Global Capitalism"* (New York: Monthly Review Press, 1998), 57-72.

What is largely missing from much of this literature is any explicit discussion of power.[116] It is implicit in the sense that all of the strategies and tactics being discussed are efforts to give workers power in their relationships with their employers, but there is only sporadic analysis of how precisely these tactics generate leverage. This has very recently begun to change. *Labor Notes*, a leftwing labor publication, has hosted a "roundtable" of articles on its website since 2003 called "Organizing: What's Needed," much of which engages questions of power directly. The majority of the articles there— as well as much discussion within the labor movement— respond to an article written by Stephen Lerner, a longtime SEIU strategist and architect of the J4J campaign. Lerner's piece, originally circulated within SEIU as a discussion piece, was subsequently distributed and published in various forms. SEIU circulated a paper (dated February 2003) within the labor movement titled "United We Win. A Discussion of the Crisis Facing Workers and the Labor Movement" that is clearly based on the Lerner draft. Lerner, meanwhile, published nearly identical articles in *Labor Notes* ("Three Steps to Reorganizing and Rebuilding the Labor Movement," December 2002) and *New Labor Forum* ("An Immodest Proposal: A New Architecture for the House of Labor," summer 2003), based on the same original draft. Lerner's "Immodest Proposal" is also the basis for the New Unity Partnership's proposals (see chapter 6). Lerner's thesis is that union density is the key to union power and the jurisdictional organization of the labor movement (or rather, its lack of jurisdictional discipline) and its decentralized structures are the primary obstacle to building strategic sectoral density and leverage. The *Labor Notes* roundtable, like the larger discussion in the

[116] One notable exception is several articles by Stewart Acuff, now the organizing director of the AFL-CIO, but longtime head of the Atlanta Central Labor Council before that. See "Expanded Roles for the Central Labor Council: The View from Atlanta," in Bruce Nissen, ed., *Which Direction for Organized Labor?* (Detroit: Wayne State University Press, 1999), 133-142; and "The Atlanta Labor Council: Building Power through Mirroring the Membership," in Immanuel Ness and

labor movement, features debate on the relative importance of density and other factors to union power. One of the key virtues of the discussion has been that most of it is explicitly framed by the question of how to build labor power.

Apart from fruitful discussion and debate, the crisis in the labor movement has generated several different kinds of responses in labor institutions themselves. The first and most obvious is capacity building. As Richard Bensinger, the AFL-CIO's first organizing director, put it often, "when we try more, we win more." When the Sweeney administration at the AFL-CIO came into office, they created an organizing department for the first time in the federation's history, they expanded significantly the federation's Organizing Institute (OI), which trains new organizers, and they earmarked $20 million to help affiliate unions with organizing drives.[117] The new AFL-CIO (as it was often called for several years after Sweeney's election) also spearheaded a push to devote more resources to organizing. It pledged to shift 30% of its own budget to organizing, and asked its affiliates to do the same by 2000. In 1996, meanwhile, the AFL-CIO launched a "Union Summer" program, modeled on the civil rights movement's Freedom Summer; the idea was to get young people out into union campaigns, inspire them and get them hooked for life on a mission of social justice. More than 1,000 people participated, and *Newsweek* declared, "It's Hip to Be Union."[118] In 1997 the federation launched the Union Cities program, an ambitious effort to revitalize the central labor councils (CLCs) and to retool CLCs to help organize new workers. In 1999 it initiated its New Alliance campaign, a further attempt to activate its state and local affiliates (CLCs and state AFL-CIO federations, generally known as "state feds"), mostly through a restructuring effort that gives the national AFL more power and that involves internationals

---

Stuart Eimer, eds., *Central Labor Councils and the Revival of American Unionism* (Armonk: M.E. Sharpe, 2001), 201-220.

[117] Bronfenbrenner, Friedman, Hurd, Oswald and Seeber, 1.

more. These efforts and others all fell under the AFL-CIO's slogan, "organizing for change, changing to organize."

The example at the top was heartening for unions that were committed to doing more organizing, largely the same unions that had voted the Sweeney slate into office. Some others, it is clear, have caught the wave and have instituted active organizing programs since 1995. But the AFL-CIO has no power over its affiliates; for instance, its 30% budgetary goal was a suggestion it hoped the affiliates would take, but not something it could compel them to adopt. Thus the actual efforts to build capacity have been very uneven, with some unions shifting enormous resources to organizing and others merely paying lip service to the idea. SEIU, HERE and UNITE each cite 50% of their budgets now dedicated to organizing, for instance.[119] AFSCME says 30% of its national budget goes to organizing.[120] CWA, however, which is also one of the leading organizing unions, still devotes less than 5% of its budget to organizing.[121] (Budget figures can be difficult to read, though, depending on whether communications and research costs, e.g., are including in organizing totals or not.) Moreover, it is clear that the less active unions continue to be fairly dormant. Furthermore, national unions (generally referred to as "internationals" within the U.S. labor movement, because many have Canadian as well as U.S. affiliates) that are committed to organizing have also had to decide how to divide the effort between local and international staffs. Many locals do not have the capacity to execute meaningful organizing programs; many are also reluctant to do so because a focus on new organizing necessarily shifts resources from existing members. Unlike the AFL-CIO in its relation to the internationals, the internationals

---

[118] Bensinger, 34; *Newsweek* quote cited in Bensinger, 34.
[119] Dave Kieffer (SEIU), e-mail, December 5, 2003; Tom Snyder (HERE), phone conversation, January 6, 2004; Dave Sanders (UNITE), e-mail, December 4, 2003.
[120] Elissa McBride (AFSCME), e-mail, December 16, 2003.
[121] Bill Henning (CWA Local 1180), e-mail, December 4, 2003.

do have direct power over locals (though how much exactly varies widely by union), but because union structures are built from the bottom up and are grounded in workers' voting for their leaders and their contracts, the internationals cannot simply run roughshod over the locals in order to impose an organizing agenda. Seventy-five percent of union resources, however, are controlled at the local level.[122] A survey of how organizing work is divided between locals and internationals in different unions is beyond the scope of this project. Suffice it to say that the decentralized nature of the U.S. labor movement has made it much harder to "change to organize" and that while there are many internationals and locals that have made tremendous changes, there are also many that have not.[123]

More pertinent for this thesis than the efforts at all levels of the labor movement to build capacity to organize is the realization among those that are organizing that the law is an obstacle and not an aide to organizing. "Labor law ... is antiquated and virtually worthless," says Bensinger, and that sentiment is echoed by virtually every union organizer in the country.[124] Many union leaders (including several that I interviewed) flat out say you cannot win using the NLRB. The abysmal state of labor law has led directly to new organizing strategies (which I will come back to shortly), which have been widely adopted throughout the labor movement. It has also led to some efforts, less universally embraced, to change the law; or at least to protest the law's unfairness. As noted above, the last labor effort to win

---

[122] Bensinger, 33.

[123] As noted in chapter 1, there are six internationals—out of 66 in the AFL-CIO—that are considered genuinely "organizing unions." They are: SEIU, HERE, CWA, UNITE, AFSCME, and the AFT. One high-ranking organizing official, who requested anonymity so as not to ruffle any colleagues' feathers, discussed these unions, saying, "There really is no one who comes close to those six in terms of honest numbers, strategic planning, dedicated resources, focus on core industries, effective organizing models, organizer recruitment and development, and consistent organizing at pace and scale, etc....there's a pretty broad consensus among those involved in organizing that the above list is it"; e-mail, February 27, 2003. Two of those unions, SEIU and AFSCME, are the two largest unions in the AFL-CIO, representing 19.3% of the federation's entire membership between them; all six together represent 34% of the AFL-CIO's membership; Stephen Lerner, "An Immodest Proposal: A New Architecture for the House of Labor," *New Labor Forum* (summer 2003), 15.

comprehensive labor law reform was in 1978. That effort ended in a defeat that stunned labor; after winning passage in the House easily in October 1977, reform legislation was killed by a 19-day filibuster in the Senate in June of the following year. Business opposition was intense, surprising unions who were still accustomed to the idea that they had a post-war accord with major industry.[125] With the election of Reagan and the ascent of the New Right in the 1980s, the political fortunes of labor fell even further. Aggressive union-busting, meanwhile, increased, and led in 1993 to an effort by unions to gain legislative relief from one of the most egregious tactics of employers, that of firing striking workers. Companies were now provoking strikes in order to deunionize by hiring permanent replacements. The striker replacement bill introduced that year would have ended the ability of employers to permanently replace workers during an economic strike, but despite the modest scope of the reform and both a Democratic Congress and a Democratic president, the measure failed. That same year, President Bill Clinton established the Dunlop Commission (formally the Commission on the Future of Worker-Management Relations), but the commission failed to recommend any kind of substantive changes in the law.[126] Since then reform of any kind has been off the agenda of major unions and the AFL-CIO. The political prospects for reform are next to zero, labor leaders have held until very recently, and their political capital is better spent elsewhere. As recently as 2001, a labor law reform bill sponsored by Senator Paul Wellstone was completely ignored by the AFL.[127]

But in 2003, labor leaders have begun to rethink their political calculus on the issue of labor law reform. With federation support and publicity, the Employee Free Choice Act

---

[124] Bensinger, 27.
[125] For details, see Gross, 238-239; and Gordon, 210.
[126] Bronfenbrenner, Friedman, Hurd, Oswald and Seeber, 8.
[127] Peter Olney, "To Organize to Scale, We Need Labor Law Reform," *Labor Notes*, http://www.labornotes.org/archives/2003/02/f.html (February 2003, viewed December 11, 2003).

was introduced in Congress in November 2003. The bill would provide for card check recognition, first contract mediation and arbitration and stronger penalties for unfair labor practices.[128] Its introduction was timed to coincide with the build-up to a series of coordinated demonstrations on December 10, international human rights day, designed to draw attention to the fact that, as the Human Right Watch report documented, workers under U.S. law are not able to exercise internationally recognized rights. There has been a concerted effort to frame the problems of U.S. labor law as one of rights violations for several years. The AFL-CIO's Voice@Work campaign, another initiative of the Sweeney era, is the nerve center of this effort.

The renewed effort at trying to change the law— rule-making— may be a response to the fact that organizing "despite the law" has not succeeded on the scale needed to reverse labor's decline. It certainly is a response to the endless evidence that labor law is *at best* useless to workers trying to exercise their right to organize, and more often is an actual hindrance. While a rule-making strategy has thus reemerged as a priority for the labor movement, rule-breaking strategies remain largely off the agenda. For unions as institutions, rule-breaking strategies can risk institutional resources and the very survival of their institutions. The UMWA's defiance of court orders during the Pittston strike, for instance, could have bankrupted the union had it lost the strike and not been able to negotiate a settlement that included dropping the fines levied against the union for that defiance. Rule-breaking, moreover, can easily be counter-productive if employers file unfair labor practice (ULP) charges and the NLRB upholds them. More spontaneous rule-breaking from below, meanwhile, such as plant occupations, is not likely in the current climate.

---

[128] AFL-CIO, http://www.aflcio.org/aboutunions/voiceatwork/efca.cfm (viewed December 3, 2003). See below for an explanation of "card check."

But what one might call a kind of 'managed rule-breaking' may be in the offing. In 1993, Jobs with Justice (a union-community coalition with chapters in dozens of U.S. cities) and several internationals organized a day of civil disobedience protests at NLRB offices throughout the country.[129] Using the 1993 actions as a model, in January of 2003, CWA Executive Vice President Larry Cohen called for "a national day of civil disobedience to shut down every NLRB office in the country."[130] AFL-CIO Organizing Director Stewart Acuff, noting that the "NLRB in its process, they not only don't protect the right to organize, they *inhibit* that right, they *frustrate* that right," called in an April 2003 speech for a "fight like we've never had" to overhaul U.S. labor law. The labor movement needs to "make every organizing campaign a local referendum on organizing rights." Moreover, Acuff said, this fight would mean "John Sweeney has to go to jail on a not-arranged-with-the-cops deal and we don't know when he'll get out."[131] Of course, that was just one speech, albeit a speech from the director of organizing of the country's central labor federation. To Acuff at least, it's clear that rule-breaking has to be part of labor's strategy to win back the right to organize. At any rate, if not outright rule-breaking, a sustained effort at protesting the law and questioning its legitimacy might develop in 2004. Right now (December 2003) it is too early to tell.

While protesting the rules is receiving renewed attention, labor's main response to its unfavorable legal position has been to devise new strategies for organizing campaigns to overcome the obstacles. By far the most significant development in this regard is the emergence of "card check" and other "non-board" strategies on a wide scale throughout the

---

[129] Jonathan Rosenblum, "Building Organizing Capacity. The King County Labor Council," in Immanuel Ness and Stuart Eimer, eds., *Central Labor Councils and the Revival of American Unionism* (Armonk: M.E. Sharpe, 2001), 168.
[130] Steve Early, "AFL-CIO Convenes Summit on Organizing: Some Call for Direct Action at NLRB," *Labor Notes* (February 2003).
[131] Stewart Acuff, "Organizing in the 21st Century: Strategic Challenges for the Labor Movement,"

labor movement. A much less prominent alternative is minority unionism. A brief word about the latter, before we turn to a larger discussion on the former. Minority unionism means, in essence, decoupling the legal status of collective bargaining rights from the organizational definition of union membership. As organized currently, unions count as their members only people who work in shops covered by union contracts. This "majority unionism," so named because majority support is required to win collective bargaining rights, is contrasted to the idea that anyone who wants to can join a union, independent of the legal status of her union's bargaining rights in her workplace. If 51% of workers in a shop vote against the union in an NLRB election, what of the other 49%? Why can't unions find a way to include those supporters in the house of labor? What of the 42 million Americans who say they would like to join a union, but don't have one at their workplace?[132] Given the legal constraints, labor obviously can't organize most of them into collective bargaining units, but shouldn't there be a way to count them in the labor column anyway? Minority unionism comes in two flavors, academic and trade union. The academic flavor, I am sorry to report, is not very useful to the task of new organizing. Well-meaning intellectual proposals for increasing labor's ranks through minority unionism are big-picture focused, and have unrealistic notions of how and why people on the ground would join unions, and why they would stay. These proposals have a kind of "build it and they will come" feel to them; if only we open up union membership to anyone, we can quickly build an organization several times the size of the current membership, increasing our organizational (read:

---

speech at Cornell University School of Industrial and Labor Relations (New York, April 9, 2003).
[132] AFL-CIO issue brief, 2.

political) capacity.[133] They sidestep the fact that *any* kind of real organizing— majority, minority, NLRB, non-board, union, community, etc.— requires slow, methodical, hard work.

The trade union flavor of minority unionism is much more nuts-and-bolts focused. Indeed, while the academic proposals are infused with a note of optimism at the potential scale of membership, the union experiences with minority unionism are grounded in a pessimistic assessment that collective bargaining rights are impossible to achieve. There are very few actual union campaigns in the U.S. using a minority unionism approach. Interestingly, the best known ones are all affiliated with CWA: WashTech (the subject of chapter 5 here), Alliance@IBM, and the WAGE campaign at GE. Where public-sector workers have no bargaining rights, union organizing is essentially also minority unionism. CWA has had some notable success with Texas state employees, but the tangible gains of the three private-sector efforts are to date rather small. Minority union organizing focuses on fighting for whatever changes are possible without the benefit of bargaining rights and on maintaining a strategic presence in the workforce in the face of obstacles that would normally simply drive the union away.

Far, far more widespread than minority union experiments, however, are "card check" strategies and other "non-board" strategies, so named because they avoid the use of NLRB (aka the labor board or simply the board) elections. A card check is an alternative process to an NLRB election for establishing majority support and union recognition. The basic idea is that an employer will recognize the union upon verification that a majority of workers have signed authorization cards. The card check process eliminates several obstacles that have skewed NLRB elections so heavily in employers' favor. In the regular NLRB

---

[133] See, e.g., Richard Freeman and Joel Rogers, "A Proposal to American Labor," *The Nation*, http://www.thenation.com/doc.mhtml?i=20020624&s=rogers (June 24, 2002, viewed December

election process, the union must first collect authorization cards from at least 30% of the bargaining unit to gain the right to hold an election. These are submitted to the board, the employer is notified, and an election date is set.[134] The time between the filing of authorization cards and the election is usually the period of the most aggressive anti-union campaigning by employers. Thus establishing union recognition by card check tends to sidestep the most hostile employer behavior. As noted earlier, prior to *Cudahy* and Taft-Hartley, NLRB officials at their discretion could determine majority status and certify unions by card check. Employers since then, however, have the right to insist on an election, which means that in order to win recognition by card check unions must somehow persuade employers to voluntarily agree to them. Therein, of course, lies the trick (a subject to which we will come back momentarily).

Card check agreements are often referred to as "card check neutrality" or "neutrality card check" (sometimes abbreviated NCC) because many of these agreements also stipulate that the employer will remain neutral during the card gathering process, returning the conditions in the workplace to their original statutory intent. Another term for these agreements is "voluntary recognition agreement" (VRA), which is slightly more broad and thereby more precise; not all these agreements literally use authorization cards to establish majority support. A still broader term is "non-board" strategy; this encompasses VRAs as well as expedited election agreements and any other negotiated process that sidesteps the usual antagonistic NLRB election process. The majority of non-board campaigns remain

---

11, 2003); and Barbara Ehrenreich and Thomas Geoghegan, "Lighting Labor's Fire," *The Nation* (December 23, 2002), 11-16.

[134] By law, the election is supposed to be held no later than 60 days after the filing. One of the very few improvements in NLRB procedures in recent years has been the relatively timely scheduling of elections. Before then, employers often delayed elections through a variety of legal challenges, sometime resulting in years-long postponements. (Such delays give employer more time to mount an anti-union campaign; studies have consistently shown that such delays decrease union success measurably; see, e.g., Garren 2003, 7.)

card check campaigns. VRAs generally not only specify that the employer will recognize the union based on majority support, but also contain language regarding the bargaining unit, union access to the worksite, employer speech, and sometimes union speech. These agreements provide a voluntary alternative to the litigious NLRB process, where seemingly endless appeals by employers can delay certification and bargaining for many years. Card check neutrality agreements have proven far more successful than NLRB elections in establishing union recognition. Adrienne Eaton and Jill Kriesky published a quantitative analysis of card checks in 2001 that documents this; among the sample they used, the success rate for card check agreements was 62.5%, and for card check neutrality agreements was 78.2%, compared to an NLRB election win rate of 45.64% for 1983-1998.[135] Even more striking was the success rate in winning first contracts; "the rate at which a first contract was achieved after recognition was gained approached 100%" they report.[136] That compares favorably with the overall national rate of first contract success, which is roughly two-thirds.[137]

Card check agreements are voluntary, as noted. In essence what that means is that by opting to pursue a VRA a union is saying it thinks its chances of winning are greater *outside* the law, beyond its alleged protection of the right to organize, than within it—notwithstanding the fact that on paper the law still says its purpose is to encourage collective bargaining. Among other things, that is a damning verdict on our national labor law. The repudiation contained in that verdict is even more stunning if you consider the scale on

---

[135] Adrienne Eaton and Jill Kriesky, "Union Organizing Under Neutrality and Card Check Agreements," *Industrial and Labor Relations Review* (vol. 55. no. 1, October 2001), 51-52. "The card check success rates are particularly striking," note Eaton and Kriesky, "when one considers that these rates are negatively biased compared to NLRB election data: 'losses' in our study encompass situations where the union began organizing (usually by gathering cards) and found insufficient interest to pursue a full card check or election campaign. Such events are not included in the NLRB statistics."

[136] Ibid., 52.

which non-board strategies are now being used. Exact numbers are hard to come by, but the available data portrays an unmistakable trend away from NLRB organizing. HERE says that "almost none," less than 5%, of its organizing in the last few years has been through NLRB elections.[138] The "great majority" of new UNITE members come from VRAs.[139] CWA estimates 80% of its 40,000 new members in the last three years came through non-board processes.[140] SEIU gives a figure of 75% of new organizing with "reduced employer opposition," which means some kind of voluntary agreement.[141] Meanwhile, even the International Brotherhood of Electrical Workers (IBEW)— not known for its organizing or its innovation— announced in 2003 not only that "organizing is the number one priority of this Brotherhood. Nothing trumps it. Nothing surpasses it," but also that henceforth "the National Labor Relations Board-certified election route— which always favors the employer— will no longer be the preferred strategy for organizing"; new approaches like card check, IBEW reports, will be emphasized.[142] One union in Minnesota reports that only 10% of new organizing in the state in 2002 was through board elections; the other 90% came primarily through card checks.[143] The AFL-CIO does not keep data on card check neutrality agreements (nor does the NLRB) but one official cited a figure of "over 50% of successful organizing" now being non-board. Card check strategies have been around for over a

---

[137] Bronfenbrenner, Friedman, Hurd, Oswald and Seeber, 5.
[138] Tom Snyder (HERE), phone conversation, January 6, 2004.
[139] Garren 2003, 1.
[140] Jimmy Tarlau (CWA), e-mail, December 10, 2003.
[141] Dave Kieffer (SEIU), e-mail, December 5, 2003.
[142] International Brotherhood of Electrical Workers (IBEW), "Getting with the Program: Organizing Conference Signals Shift in Focus," http://www.ibew.org/stories/03daily/0310/031021_orgconf.htm (October 21, 2003, viewed December 3, 2003).
[143] Abram Isaacs, "Organizing Update," Minnesota Newspaper Guild Typographical Union, TNG-CWA Local 37002, http://www.shoptalk.org/news/organizing.htm (viewed December 3, 2003). The reader may wonder why I am, seemingly arbitrarily, mentioning card check statistics from only one of 50 states. The answer is that in the absence of systematic data, I did a Google search on the terms "card check," "organizing" and "union"; of the results that I sifted through, this was one of very few pieces of quantitative data available.

decade, and their use increased steadily throughout the 1990s. But the scale of the current reliance on VRAs is striking compared to even five years ago.

Perhaps more important even than the quantitative shift away from NLRB elections and to VRAs is the successful use of non-board strategies to organize crucial sectors or regional markets. Justice for Janitors provided an early role model, as did HERE's work in Las Vegas (the subject of chapter 4). SEIU went on to try to use VRAs in the healthcare field, initially with less success, but later they made significant strides with them. At Catholic Healthcare West, the union negotiated an expedited election procedure in 2001 that covered 45 hospitals. In 2003, SEIU and AFSCME together won an agreement for organizing at Tenet; that agreement covers 40 institutions. Both agreements came after years-long campaigns. CWA negotiated a card check and neutrality agreement with SBC back when it was a regional phone company in the southwest and by December 2000, the union had organized virtually all SBC wireless workers in the region (5,075 out of 5,203 to be exact).[144] When SBC expanded nationally, the union negotiated an agreement for the "outer region"; joint ventures like Cingular were covered this way, and CWA now represents 17,000 Cingular workers as a result.[145] In 2003, UNITE launched a non-board campaign to organize 17,000 workers at Cintas, the nation's biggest uniform provider. While it is impossible to tell whether they will succeed, the campaign is the first *nationwide* campaign with a non-board strategy.

The spread and success of non-board strategies, not surprisingly, has led employers and their political allies to try to outlaw such agreements.[146] In May 2002, Rep. Charles

---

[144] Danny Fetonte, interview by author, by phone, December 31, 2000. See also Communications Workers of America, *CWA at Southwestern Bell. Five Years to Card Check* (1997).
[145] Erin Bowie, "The CWA's Experience, A Tale of Two Card-Check Agreements," *Labor Notes*, http://labornotes.org/archives/2003/04/e.html (April 2003, viewed December 11, 2003).
[146] Dan Clawson, *The Next Upsurge* (Ithaca: Cornell ILR Press, 2003), 202.

Norwood (R-GA) introduced a bill (H.R. 4636) that would have prohibited unions from becoming certified bargaining agents without a secret-ballot election. "Every time workers find a way to win, they make it illegal," commented Acuff about Congressional efforts to outlaw card checks.[147] The new labor law reform bill, meanwhile, would include card checks in the law as a basis for certification. Unionists like Garren argue that VRAs further the stated goals of U.S. national labor policy, i.e., collective bargaining, employee freedom of choice and industrial peace, and should be encouraged for that reason. "VRAs... curtail the industrial strife common in organizing drives," writes Garren, because they "eliminat[e] the fear-mongering common in 'vote no' campaigns" and thus change the character of union drives.[148]

For now, VRAs remain purely voluntary. They are negotiated between unions and employers on an individual basis, and they vary considerably in their content. Eaton and Kriesky offer a helpful overview of the range of provisions that these agreements carry, and also the effect of different kinds of provisions on success rates. Most notable in this regard is that agreements with card check provisions were significantly more successful than those with a neutrality provision but no card check (45.6%, indistinguishable from the NLRB win rate). Furthermore, among the campaigns studied, neutrality-only employers ran significantly more aggressive anti-union campaigns.[149] This suggests, of course, that the kind of agreement negotiated (rather than the abstract fact that there is a negotiated agreement) matters. The rules of the game, as ever, are strongly determinative of the outcome. It is clear in context that unions that only get neutrality but not card check are in a weaker position, which most likely also accounts for the higher incidence of violations in those cases.

---

[147] Acuff 2003.
[148] Garren 2003, 18, 20.
[149] Eaton and Kriesky, 51, 49.

All this raises the obvious question, How does a union manage to get an employer to voluntarily agree to a recognition agreement? The short answer is that most VRAs are the result of collective bargaining language elsewhere in a company. Contracts that have such language specify that the employer will recognize the union based on a card check in its other facilities or in newly built or acquired facilities. This strategy, called "bargaining to organize," uses the organized and legally established leverage of unionized workers to make it easier for the union to organize other shops. It can only be used, obviously, where a union already has a presence in a company, and it makes sense where the company either has non-union facilities or is likely to build or acquire new facilities. A variation on the bargaining-to-organize strategy is the use of bargaining power to win card checks not at a company's other facilities but at the suppliers or vendors that the company has relationships with; this leveraging of the dependence of suppliers on their big clients has been used by the UAW in the auto parts industry. The SBC agreement mentioned earlier is a bargaining-to-organize product, and the vast bulk of card check organizing in Las Vegas comes through collective bargaining agreements as well. The AFL-CIO has made a major push to encourage affiliates to pursue such contract language, and in 2000 produced a comprehensive manual for unions on the subject.[150] Card checks as bargaining demands have increased in importance; whereas once such demands were made but quickly dropped form the list of core demands, now they are often at the very center of contract renewal battles. In 2000, for instance, Verizon workers struck largely over the issue of bargaining-to-organize language.[151]

VRAs can, however, be negotiated without the benefit of an existing collective bargaining agreement, and attempts at gaining such agreements are multiplying throughout

[150] See also Laureen Lazarovici, "Bargaining to Organize," *America@Work* (June 2001), 8-11.
[151] CWA has been unable to organize any workers under the agreement, however, and blames company violations of the agreement; Bowie.

the labor movement. The Cintas campaign, for example, is not relying on any existing contractual relationship in its effort to win recognition. Either way, though, winning card check neutrality requires an exercise of power by the union. It depends on marshaling enough leverage to get employers to agree. On the surface, this contrasts with organizing through NLRB elections (and is the reason card checks weren't used more widely until recently), where it appears that by using the legally established procedures workers can win unionization without the difficult task of getting an employer to 'voluntarily' agree. But given the obstacles of the NLRB process, and particularly employers' ability to appeal election outcomes and stall good faith bargaining, it is becoming increasingly clear to organizers that both processes depend for their success on *union power* and quite decidedly *not* on the law.[152]

---

[152] Several years ago, I came up with an analogy that I think (I hope) helps clarify the differences and similarities of organizing with card check strategies and NLRB elections: "Think of an election campaign and a card check campaign as two different routes starting at the moment the decision is made to organize a shop and winding up at a signed, ratified contract. The two routes cover essentially the same terrain and present many similar obstacles. But they differ in one crucial way: in an election campaign the first part of the route is protected (in theory, anyway) by the availability of legal remedies for an employer's illegal exercise of power (e.g., the reinstatement of a fired worker, a re-run of an unfair election, or an order to bargain with the union). Unions often prevail in these skirmishes (though not often enough) because the employer is usually in obvious violation of the law. But after the last legal appeal is exhausted and negotiations have been ordered, the terrain on this route shifts perilously. If the employer refuses to reach an agreement acceptable to the union... the union must muster the power to force the employer to the table without recourse to the law. Let's make this a climbing analogy: the first part of the route is like a hike along a herd path through rugged mountain terrain. At the decisive moment—compelling the employer to negotiate and sign a first contract—the terrain changes, and you are at the base of a 1,000 vertical climb. Hope you brought your gear.

"The other route, the card check route, differs from the election route in this regard: the 1,000 foot cliff is at the beginning of the route and the herd path begins after you've climbed the cliff. On this route, that cliff represents the task of getting the employer to agree to a card check. Scaling this cliff is roughly the same as scaling the cliff on the other route—there is no legal means to make the employer consent to your demand, and you must leverage the power to make him do so from some other source(s). Once you've climbed this wall, however, the terrain moderates and a herd path emerges. Legal processes indicating the way to a contract begin on this side of the wall—an independently verified card count, and then legal recognition, and the right to bargain. Because you already scaled the Wall of Employer Resistance, the hiking from the right to bargain to the end, the ratified contract, is generally much easier on this route....

"There are two points that the climbing analogy suggests. The first is that the choice of strategies is always a tactical one. We might formulate a general guideline like this: if you don't have a supply of rope, your best chance is to take the election route and pray you can find some rope before you reach the Wall on that route. ...

This is one reason that NLRB organizing is now a minority trend. The main point of this observation here is to note that the leverage considerations and tactics unions use are roughly the same whether they are trying to organize through card checks or through the NLRB.

This brings us to one of the central arguments of this dissertation: In the absence of meaningful legal protections of the right to organize, unions are building campaigns that draw third parties into their struggles with employers. These take many different forms—from community coalitions to efforts to intervene in regulatory politics or financial markets— but the underlying principle is the same, namely to leverage other social relationships in order to build power, enough power to force the employer to accept the union. Most major union drives now employ what some unions refer to as a "comprehensive campaign," meaning simply the use of multiple tactics, involving many outside actors and institutions. Typically, this will include significant outreach to various communities in order to enlist allies; use of legislative and/or regulatory politics to demonstrate to the employer that the union can cost them money or cause them headaches; some financial strategies like reports to lenders, investors or stockholders; and a media component to reinforce the pressure on the employer from all these other sources.

Perhaps the most basic and obvious third-party strategy is the enlistment of allies to help the union's cause. Ally strategies range from the most simple, like handing out leaflets to the public in front of a workplace, to long-term campaigns that build organizational

---

"At the same time, the analogy suggests something far more basic: the struggle up the Wall of Employer Resistance is going to be roughly as difficult on one route as it is on the other. If the union has to muster enough power to bring the employer to the table either way, it stands to reason (it being the same employer) that it should take about the same amount of leverage"; "Scaling the Wall of Employer Resistance: The Case for Card Check Campaigns," *New Labor Forum* (fall/winter 1998), 125-126. To stretch this analogy even further, the crucial task is in getting enough "rope," i.e. leverage, and as we shall see that depends mainly on drawing other relationships into the worker-employer relationship.

infrastructure and involve the union in community issues. Unions reach out to customers or potential customers to build sympathy for their cause, and sometime to ask customers to contact the company and ask it to respect the workers' rights. Workers at Brylane, a catalog clothing distribution center in Indiana, sent out a glossy catalog to Brylane customers in 2002 while they were seeking a card check agreement from the company. It had fewer pages than the company's catalog, but was laid out exactly like a regular clothing catalog; in it, Brylane workers modeled Brylane clothes while the captions described workplace injuries and other issues. The cover announced "Sweatshop Holiday Catalog 2002." Healthcare workers often argue that they seek unionization because they are concerned about patient care issues and perceive the need for an organized voice in order to advocate for their patients. Thus healthcare unions build ties with both patient advocates and the public (the potential patient community) by focusing on the workers' agenda for better quality care. Much current union organizing is among immigrant workers, and the labor movement as a whole has made a remarkable about-face on issues of immigrants' rights in the last 10-15 years, culminating in 2000 with the official reversal of AFL policy, which now favors immigrants' rights and amnesty, and opposes the employer sanctions of the 1986 Immigration Reform and Control Act. When organizing in workplaces that are heavily immigrant, unions seek to forge ties with the ethnic communities of the workers, getting involved in their political issues, participating in their cultural events, reaching out to their clergy, and— in the best cases— genuinely becoming part of those communities.

Union organizing efforts also seek allies within the labor movement, perhaps the most obvious resource of all and yet surprisingly untapped in many instances. For years, unions pursued their organizing drives in isolation, and their union newspapers reflected only the immediate campaigns of their own members. One way in which labor is trying to

change this habit is through the attempted revitalization of the CLCs. One of the goals of the Union Cities initiative, for example, was to facilitate the mobilization of workers across industries to help in individual union efforts. Union Cities also encouraged the 30% budget goal for organizing, challenging the councils to play a role in supporting and coordinating organizing work they had long since ceased to do.[153] There have been several other notable citywide or regional efforts in the labor movement that seek systematically to broaden the unions' base of support, not only in support of individual, immediate campaigns, but in the long-term by working in coalition with other groups on community issues. The Stamford Organizing Project is probably the best example. The Stamford project is a joint effort by four unions, supported as well by AFL-CIO funds, and it began by both mapping union members' connections in the city— e.g., their involvement in churches, tenant groups, the NAACP, etc.— and by surveying their needs outside the workplace. Affordable housing, it was immediately clear, was the biggest concern for union members. The Stamford project thus got deeply involved in local tenant issues. When it later came time to do house calls as part of the unions' drives, organizers were met by "an unusually friendly reception" in the public housing projects that had mobilized in several battles with the city's Housing Authority.[154] The South Bay Central Labor Council, meanwhile, has had a focus on making the labor movement relevant to workers inside and out of organized labor's ranks and in discussions on economic development in the region. In addition to establishing an organizing committee, the South Bay CLC sponsored Working Partnerships USA, an independent research and advocacy institute, launched a Temporary Employment Project,

---

[153] Amy Dean, "The Road to Union City: Building the American Labor Movement City by City," in Jo-Ann Mort, ed., *Not Your Father's Union Movement* (London: Verso, 1998), 164. See also Ness and Eimer, eds., *Central Labor Councils and the Revival of American Unionism* (Armonk: M.E. Sharpe, 2001).

[154] Clawson, 118. See also Jane McAlevey, "It Takes a Community: Building Unions From the Outside In," *New Labor Forum* (spring 2003), 23-32.

helped pass the city's living wage law, and generally, committed itself "to make social equity an issue in every debate about public subsidies, infrastructure investment, and regional policy."[155]

Labor's search for allies has also looked to building and supporting broader organizational infrastructure in support of union efforts as well as ties to related social movements. Nationally, the most important organization working consistently with unions in support of organizing efforts is Jobs with Justice, a union-community coalition with 40 chapters in 29 states.[156] One tactic Jobs with Justice has used in many cities is the implementation of Workers' Rights Boards. These boards recruit prominent community leaders to hold public hearings at which workers describe their struggles to organize against hostile employers; they help build broader community awareness and support, and often garner media attention as well. Once notoriously unwilling to get involved in political movements that it could not control, labor has also begun to get over that bad habit and ventured, somewhat tentatively, into the global justice movement. The famous "Teamsters and turtles together at last" sign seen at the World Trade Organization (WTO) protest in Seattle in 1999 served as a symbol of the hope that unions would become an active part of the growing movement against corporate globalization. Unions' actual involvement has been very uneven, but not insignificant. Meanwhile, labor support for the student anti-sweatshop

[155] Amy Dean, "The South Bay AFL-CIO Labor Council: Labor's New Laboratory for Democracy in Silicon Valley," in Immanuel Ness and Stuart Eimer, eds., *Central Labor Councils and the Revival of American Unionism* (Armonk: M.E. Sharpe, 2001), 195. See also Steven Greenhouse, "The Most Innovative Figure in Silicon Valley? Maybe This Labor Organizer," *New York Times*, November 14, 1999.
[156] Jobs with Justice, http://www.jwj.org/AboutJWJ/AboutJWJ.htm (viewed December 8, 2003).

movement is substantial, and unions are a major force in the living wage movement that has passed ordinances in at least 40 cities.[157]

Financial strategies are a second set of third-party interdependencies crucial to union efforts to build power in a hostile climate. They have to do not with building support for the union's cause but rather with curbing the employer's ability to do business by intervening in relationships between the employer and various financial actors; such as stockholders, investors, and lenders. These strategies were pioneered by the Amalgamated Clothing and Textile Workers Union (ACTWU, one of UNITE's predecessor unions) during a four-year struggle against the J.P. Stevens Company in the late 1970s and early 1980s (the subject of the movie *Norma Rae*). The Stevens campaign went after not just the company, but other companies that Stevens' directors ran or whose boards they served on. The union thus broadened the conflict by drawing a whole list of companies into the fray. Union members each bought one share of stock in these companies; the shares were then bundled into proxies and union representatives both disrupted shareholder meetings and held just enough shares to influence some votes. ACTWU also went after the company's banks. In the end, this "corporate campaign," as it was known, proved decisively successful, and spawned the growth of such tactics throughout the labor movement.

Today all of the organizing unions have research staffs whose primary purpose it is to evaluate target companies' business relations, plans and structure in order to uncover opportunities for union intervention. Shareholder actions continue to be a staple in this array of tactics. Union pension funds, because of their size, are emerging as a potent subset of union investors in shareholder actions. During a campaign at Sunrise Hospital in Las Vegas,

---

[157] Stephanie Luce, "Building Political Power and Community Coalitions: The Role of Central Labor Councils in the Living-Wage Movement," in Immanuel Ness and Stuart Eimer, eds., *Central Labor Councils and the Revival of American Unionism* (Armonk: M.E. Sharpe, 2001), 141.

Columbia/HCA's biggest hospital, SEIU used shareholder activism several times. In 1997, it promoted a successful shareholder resolution to eliminate a poison pill. The company at the time was the target of the biggest medical fraud investigation in U.S. history. The following year, as David Moberg reports, SEIU "joined in a New York State public employee pension lawsuit against directors for their responsibility in the fall of Columbia stock. The union also distributed information about Columbia's financial and managerial problems to Wall Street asset managers." Actually, what we did— I say we because I served as the communications director on this campaign at the time— was issue a weekly bulletin called CODE Columbia (Caregivers Organized to Demand Excellence at Columbia/HCA), which we faxed and e-mailed to hundreds of industry executives, Wall Street analysts, fund managers and reporters. "Most significantly, SEIU persuaded two individuals with solid credentials in finance and health care to run in 1998 as alternatives to the company-backed slate."[158] After a bloody four-year PR war, that proved to be the final straw for Columbia. Negotiations for a neutrality agreement and a non-board election at Sunrise began shortly thereafter.

Most union interventions in companies' business relationships don't seek to win allies from financial institutions or investors, or even to focus on a company's fight against the union; rather, they engage these actors on issues that matter to them, like the soundness of a company's marketing strategy or financing plans, its regulatory problems, or the impact of labor strife on the company's profitability. Hence the crucial role that union researchers play; they become experts, as much as anyone on Wall Street, on the companies they research. Union reports and actions aim not just at disrupting relationships with shareholders, but other financial actors as well. HERE's research reports on Vegas casinos, for instance, have at times contributed to the downgrading of companies' bond ratings.

---

[158] David Moberg, "Labor's Capital Strategies," in Jo-Ann Mort, ed., *Not Your Father's Union*

The third major set of relationships that unions are enlisting in their effort to overcome organizing obstacles are political relationships. Union political strategies in organizing campaigns take many different forms and engage a wide variety of state actors, from regulatory agencies to elected legislators. The single most stunning example of the crucial role politics can play in successful organizing is the unionization of 74,000 home health workers in Los Angeles in 1999. SEIU led an 11-year political campaign to, essentially, create an employer. When the drive started, courts initially ruled that the workers were independent contractors, and thus not workers in the meaning of the law; SEIU then turned to the legislative branch and campaigned for the creation of a public authority system so that home health workers would have a central employer, namely the authority, and could then be organized by the union. Healthcare organizing has the advantage that healthcare is highly regulated and thus there are numerous points of intervention available to the union. SEIU's ability to block hospital acquisitions or closures, both subject to government regulation, was a contributing factor in the attainment of both the Catholic Healthcare West and Tenet organizing agreements. Wherever government entities provide licenses to businesses there exist opportunities for a union to try to stand between an employer and a licensing or relicensing process. Even in industries that are largely unregulated a union can sometimes draw in a government agency, like the Occupational Safety and Health Administration (OSHA) or the Equal Employment Opportunity Commission (EEOC). Employers in industries with an active legislative agenda may be vulnerable to disruption of their legislative goals from unions. Even just the support of local elected officials on a picket line or at a public forum represents a political relationship that a union can leverage to build power against an employer.

Movement (London: Verso, 1998), 208.

The usefulness of all these kinds of third parties to unions depends on some receptivity on their part to the unions' efforts. Like the financial actors who may not care about a labor struggle but will pay close attention to a union report on an employer's management or financing plans, many state actors are involved by a union on issues unrelated to the organizing drive. But even if the issue is far removed from workers' rights to organize, state actors warm to their regulatory or oversight duties more quickly if the union has established a good relationship with them. In legislative matters, obviously, relationships with lawmakers are crucial. For all of these reasons, unions are also active in electoral politics *as part of* their organizing strategy. If they can demonstrate to elected leaders that they have the voting power to remove or return them to office, they can improve those leaders' responsiveness to union issues. Thus unions leverage the contributions of their members *qua* voters in their relationships with politicians, and then leverage their relationships with politicians against employers through a variety of channels.

Political strategies have been seen by union organizers in the last five years or so as an increasingly crucial component to organizing campaigns. State actors have emerged as the single most important category of third-party actors that unions draw into their struggles with employers for two reasons. First, because there is a dense network of agencies, officials, structures to draw on in order to create leverage opportunities. But second and more fundamentally, because these actors by their nature as state actors are largely rule-makers, and by setting, resetting, enforcing or ignoring the rules that shape the terrain on which unions and employers engage each they play a particularly critical role. Because of its rule-making function, the state is also often the target of labor action; it is an intermediate target, singled out because of its unique capacity to change the balance of power between workers and employers.

VI. Conclusion

As we have seen, the state has had a profound influence on the development of labor relations in the U.S. Its capacity as the primary rule-maker in society has put it in the middle of the struggle between workers and employers. For most of our history, the American state has been an ally of employers, using executive, legislative and above all judicial (and administrative) authority to hamstring workers' ability to use their labor power to win union rights. But the story is more complicated than that. The Great Depression, the New Deal and the massive labor unrest of the 1930s gave rise to a different role for the state, briefly making it a vehicle for unionization. And today, while the apparatus of labor law is thoroughly anti-union in its effect if not always its intent, the 'state' encompasses so many different actors and functions that unions recruit the involvement of some state actors even as they try to get as far away as possible from others.

In describing the historical development of labor strategies as a product of state policies and actions I do not mean to imply that the trajectory the labor movement has taken was inevitable. The material here is meant to explain why labor made choices it did in the context of the particular constraints imposed on it by the state. It does not mean that labor 'had no choice' but to follow this path.

The same is true of the current era. Virulent opposition from employers combined with useless laws has primarily prompted unions to redouble their organizing efforts, and to invest substantial amounts of effort, resources, and creativity in sophisticated campaigns that consciously look outside the NLRB to find leverage sources. This is not necessarily the only possible response— as for instance the newly introduced labor law reform bill suggests.

Indeed, eight years into the New Voice's tenure at the AFL-CIO this "changing to organize" focus has begun to generate some debate in the face of the continued decline of union density. We will return to this subject in the concluding chapter, but first we will look at three campaigns that exemplify the extraordinary efforts some unions are making to organize and the complicated web of social interdependencies they are drawing on to do it.

CHAPTER 3

It takes a village to win a union: Nursing home organizing in Florida

I. Introduction

Working conditions for nursing home workers in Florida are difficult and demanding. Economically, they are among the worst compensated groups of workers. In 1998, the median hourly wage for a certified nursing assistant (CNA) in Florida was $7.31, below the federal poverty line for a family of four.[1] In fact, most Florida nursing home workers work two jobs. Healthcare is also an urgent issue for these workers. Most employers provide health benefits, but the co-payments are prohibitively high, often in the hundreds of dollars per month, and thus many of these healthcare workers simply cannot afford healthcare for their own families. In addition to economic issues, nursing home workers are deeply concerned about quality of care issues, most notably short-staffing. Many also complain about a lack of respect and dignity on the job.

These four issues are with remarkable consistency the issues that lead nursing home workers in Florida, and throughout the U.S., to seek union protection.[2] In the mid-1990s, both SEIU and UNITE were doing some organizing in the industry in Florida. SEIU is the

[1] SEIU, *Crisis in Florida Nursing Homes: How Short-Staffing and Underfunding Put Residents and Staff in Danger*, (SEIU, 2000), iii.
[2] David Kieffer, presentation at Organizing Research Network meeting, Los Angeles, CA, May 18, 2002.

nation's largest healthcare union, with over 750,000 healthcare workers. UNITE, the merged union of the country's textile and apparel unions, has organized in a variety of new sectors as its traditional base continues to be devastated by shop closings associated with the dynamics of the international economy. Furthermore, UNITE has been one of very few unions willing to organize and fight in the South. The two unions found themselves "bumping heads" in their efforts to organize in Florida's nursing home industry, and quickly decided to pool resources and work together instead.[3] SEIU's expertise in healthcare and UNITE's experience in the region made the joint project, called Unite for Dignity, a logical combination. Monica Russo, the campaign's director then and now, said it was "a really dynamic... complementary match between UNITE and SEIU in terms of Unite for Dignity, because you had the best of both worlds."[4] The "Dignity" part of the project's name was drawn from SEIU's longstanding campaign to organize workers in Beverly Enterprises, one of the nation's biggest and most virulently anti-union nursing home operators; that campaign is known as the Dignity campaign. In 2001, Unite for Dignity restructured itself institutionally. It went from an organizing project sponsored by two international unions to a full-fledged local affiliated with one international, SEIU. The new local, 1199FL, is responsible for the ongoing organizing project as well as the representation of the already organized workers.[5]

The institutional change reinforced the union's emphasis on the integration of organizing, bargaining, political and community work. From the outset of the campaign, union leaders believed that in order to be successful, "organizing" had to be understood in

[3] Connie Harrison, interview by author, Miami, FL, May 28, 2002.
[4] Monica Russo, interview by author, Miami, FL, May 28, 2002.
[5] In an effort to minimize the clumsiness of referring to the campaign every time as Unite for Dignity/1199FL, I have generally chosen to refer to it by the name it had at the instant I am discussing.

terms much broader than individual NLRB campaigns. Election victories are pointless if workers never get a first contract; bargaining a contract, in turn, is virtually impossible without help from community allies. Winning substantial economic improvements in those contracts, meanwhile, is effectively foreclosed without changes in the way the government funds the industry, and without some industry-wide agreement that moves negotiations beyond the shop-by-shop mechanism. The union's organizing strategy is grounded in this broader understanding of what successful organizing entails and it is built on an analysis of the various social relations in which the union and the employers are enmeshed and how to utilize those to overcome the substantial obstacles to organizing. The union's multifaceted approach is perhaps best described as a series of strategic layers, each involving a set of specific third parties activated by the union to try to overcome employer resistance.

At the most fundamental level is the battle to win union recognition and representation in each individual nursing home. This is the traditional, narrow understanding of the term "organizing." Despite the difficulties and pitfalls of organizing through NLRB elections, Unite for Dignity/1199FL decided to go this route for one simple reason: They did not feel like they had another choice. Without leverage sources with which to pressure employers into accepting card check or other modified recognition agreements, the union's only way to win recognition is through the one procedure that does not require voluntary employer consent, a board-supervised secret-ballot election. The union does not have sufficient density either in the industry as a whole or in most of the nursing home chains to be able to demand card checks. Nursing homes are increasingly part of national or regional chains, rather than independent individual businesses. In the bigger chains, the task of building enough density to bypass NLRB elections is almost impossible, as the vast bulk of their homes are outside Florida and beyond the union's reach. Building density in the smaller

chains, meanwhile, is a part of the union's strategy; but even here, the union is not yet big enough to organize outside the NLRB. For now, the union has focused on how to win NLRB elections more than how to circumvent them. It has a tight organizing model for these election drives. There is the very little recruitment of outside parties during this phase of the union's organizing; the organizing model is built on the belief that it is the determination of the workers that makes the crucial difference in union elections. Accordingly, most of the focus is on strengthening the workers in their confrontation with the employers. Nonetheless, even at this level, there is a conscious reliance on certain outside forces, most notably the NLRB. Though NLRB rules are rightly seen as favoring employers, 1199FL has effectively used the board's basic procedural role in union elections to its advantage.

The next strategic layer is the struggle to secure a contract after the election has been won. Structurally, the union's position vis-à-vis employers is even weaker here, because the NLRB's ability to enforce workers' statutory rights is even more limited. The post-election objections and appeals procedures of the law provide employers with virtually endless opportunities to forestall the day when they must sit down and bargain with the union, and even then, there is no way to compel employers to actually bargain in good faith. The determination of the workers may be enough to carry an election but, 1199FL leaders agree, it cannot by itself deliver a first contract. Thus the union mobilizes outside allies during the contract struggle and also seeks to bring additional pressure on the employer by taking its case to a wider audience through the use of media. The union's strategy is not to rely on the board's rulings to bring an employer to the table, but rather on pressure generated by drawing on and drawing into its struggles relationships the union has with numerous community and political actors.

Measured by its ability to win union elections and secure first contracts, Unite for Dignity/1199FLis a promising success story in the labor movement. In its first seven years, it organized over 50 nursing homes. Its win rate in NLRB elections is 82%, far above the national average of 52% for the same period; it is also the highest win rate of any healthcare local in SEIU.[6] The campaign's ability to secure first contracts is also above average. These results have won the union praise and recognition throughout the labor movement. In 1999, for instance, the campaign was featured during the biennial AFL-CIO convention.

Yet seen from a larger perspective, in terms of the union's ultimate goal of winning "economic justice," as Russo put it, for Florida nursing home workers, the campaign is only in its beginning stages.[7] There are about 700 nursing homes in Florida; at the end of 2002, 1199FL represented 70 of them, and the most homes they have been able to organize in a year is 12. At that rate, it would take decades to reach the level of union density that would allow the union to meaningfully affect the economic parameters of the industry— a situation where the phrase "justice delayed is justice denied" would surely apply. It is the determined opposition of employers combined with the inability of the NLRB to effectively intervene and guarantee workers' statutory right to organize that makes it impossible for the union to organize more than 12 shops a year.

It is precisely this problem that has led 1199FL to a broader political strategy; the goal is to achieve an industry-wide agreement to organize, instead of the shop-by-shop mechanism that cannot hope to win enough power to drive wages and work conditions. The nursing home industry is both highly regulated and dependent on government funding, and

---

[6] The win rate for Unite for Dignity/1199FL is based on elections held from 1996 through June 2002; the national NLRB win rate is a cumulative measure from the same years, based on yearly data provided by the NLRB; "Union Representation Elections, Total RC and RM Elections Held in Cases Closed (Excluding RD Elections) Conducted by the National Labor Relations Board Since 1940," e-mail from Patricia.Gilbert@nlrb.gov, March 3, 2003. SEIU organizing data comes from the union's internal organizing reports from January 1998 through April 2002.

it is this relationship between the industry and the government, specifically the Florida state government, that the union has sought to leverage and use to its advantage. In a deliberate search for ways to circumvent the obstacles NLRB organizing presents, 1199FL has turned to an intense involvement in legislative politics. The union has had some legislative success on regulatory issues, and in the process greatly increased its profile, but it is a long way from being able to use the political arena to engage the industry on union rights issues. Nevertheless it is clear that that state actors have emerged as the critical third parties that the union must engage if it hopes to prevail in its relationship with nursing home employers.

II. Data sources

My primary data sources included extensive interviews with union leaders. I interviewed the union's top officials, President Monica Russo, Secretary-Treasurer Dale Ewert, Organizing Director Connie Harrison and Internal Organizing Director Jennifer Hill; its lead organizer, Calvin Johnson; one of its staff representatives who previously worked as an organizer (and who requested that her name not be used); and three of its rank-and-file leaders, Pearl Gooden and Dieuseul Mirtil, both executive board members, and Richard Chiques, who serves on the union's secondary leadership body, the Dignity Leadership Committee. Other sources included union records, research reports and literature; these were extensive; for instance, every organizing drive the union has conducted has a binder (most are three-inchers) assigned to it. Many of these binders also included employer literature from organizing drives. I also used NLRB charges, complaints, objections and decisions. I relied as well on newspaper and other media accounts. Newspaper sources came

[7] Russo, interview.

from a wide range of publications; they included the *Miami Herald* and over a dozen other local and regional newspapers, such as the *South Florida Sun Sentinel*, the *Miami Times*, the *Broward Times*, the *Orlando Sentinel*, the *Tallahassee Democrat*, the *Tampa Tribune*, the *Palm Beach Post*, and *Florida Today* (naming just the most prominent ones). News sources also included Haitian community publications, most notable the *Haitian Times*. In addition, there were several long feature articles on Unite for Dignity/1199FL in the *New York Times* and in several liberal publications, such as Miami's *City Link*, *Southern Exposure* and the *American Prospect*. Industry sources included the trade publication *Modern Healthcare*, and the websites of two trade associations, the Florida Health Care Association (http://www.fhca.org) and the Florida Association of Homes for the Aging (http://www.faha.org). Economic data came from union sources.

III. NLRB elections: "We win because workers want to win"

The NLRB is "pretty much useless, but it's the only procedure we have," 1199FL Secretary-Treasurer Dale Ewert summed up the union's decision to pursue union recognition through the antagonistic NLRB election process.[8] Without leverage to force employers to agree to another method of recognition (e.g., a card check agreement), the only route to unionization is through the adversarial NLRB election process; this is the only process that does not require the employer to 'voluntarily' agree. 1199FL does not have sufficient leverage options to circumvent the NLRB route. They don't have enough union density or political clout to negotiate an industry-wide deal. Nor does the industry have any

[8] Dale Ewert, interview by author, Miami, FL, June 4, 2002.

obvious vulnerabilities that could be used by the union to force a deal. Ewert summarized the union's dilemma:

> If we could figure out, and by the way we are trying to figure out... where we can go, where we can get away from the labor board by using our financial leverage or our organizational relationships and our density or our political plans to organize workers, we're doing that. But right now we're not big enough, we don't have enough of those resources that leverage to move lots of non-NLRB elections. I would hope that the future of organizing nursing homes in Florida is less and less NLRB and more and more voluntary recognition, industry agreements. But if one of the things that gets you there is density, well, it's kind of a chicken and egg; you build density by winning lots of NLRB elections, so I think for the foreseeable future we're stuck with it.[9]

Russo, an unsentimental realist who has spent years organizing in the difficult climate of the South, sized up the labor board this way:

> We can cry and bitch and moan all the time, but it is what it is. Until we have a revolution we're going to have a labor board that's backwards. Even with a Democratic administration and real progressive people involved and even leading it, it was still an anti-worker apparatus. At the end of the day, we got to figure out, if that's our reality, what are we going to do about it?[10]

The first thing Unite for Dignity decided to do about it was create an organizing model that does not rely primarily on the efficacy of the labor board to succeed. The model is premised on the conviction— shared universally by everyone in the union— that *the* decisive factor in winning union elections is the workers' determination, their desire for a union, their perseverance. Accordingly, the model focuses intensely on reinforcing workers' resolve, on providing them with the knowledge and support to make it through to election day without succumbing to the employer's anti-union campaign. It is designed to minimize workers' exposure to the employer's tactics and to render them less effective when workers are exposed to them. It is also designed not to count on NLRB enforcement of the law in order to succeed.

---

[9] Ibid.
[10] Russo, interview.

The first part of a union drive at a nursing home takes place in secret.[11] Workers meet with an organizer, hand out authorization cards and sign up their co-workers, all before their employer ever knows they are organizing. This "under the radar" approach allows the organizer to explain the election and bargaining process, the workers' rights under the law, and crucially, what workers can expect their employer to do and say once he finds out workers are organizing— all *before* the employer can give workers its version of what the union does and means. In organizer jargon, this is known as "inoculation," and it's aptly named, because when workers hear a particular argument or claim from an employer after the union has predicted that the employer would make exactly that argument or claim it loses much of its power. Inoculation allows the union to provide workers the interpretative framework through which they will then analyze the entire subsequent campaign. Conversely, if the union drive is exposed before organizers have had a chance to inoculate workers, then it is the employer that offers workers' their first interpretation of the union. This inoculation process begins at the first union meeting. As other workers in the shop sign up, they, too, get inoculated through house visits by union organizers.

In addition to inoculation, the early, secretive phase of a union drive is characterized by an emphasis on workers' legal rights. Organizers cite workers' fear and ignorance of their rights under the law as the initial obstacles to organizing; they stress inoculation and education as the remedy. When organizers first meet with workers, they explain that workers have a right to self-organization under the law and they review specifics of what employers

[11] In the early years of the campaign, most drives were initiated in response to worker approaches to the union. Organizing focused on these kinds of shops is often called "hot shopping" by labor organizers. It is contrasted to "strategic organizing," in which the union initiates organizing based on a plan to unionize key employers, industries or markets. Unite for Dignity/1199FL moved to a much more strategic oriented model in recent years (meaning, among other things, that individual drives are started more often by organizers approaching workers).

are and are not allowed to do in response to workers' organizing efforts. Realizing they have rights, organizers report, reduces the fear of retaliation and losing their jobs that can paralyze workers. "If you have educated the workers properly on their rights covered under the law and they understand that once they do this [organize a union] the only way they can be fired is for just cause, it gives them a sense of power," Calvin Johnson, the union's lead organizer, noted.[12] Similarly, 1199FL Organizing Director Connie Harrison said, "when we're setting up a campaign we use the law heavily, as part of an organizing tool to let people know that they have rights... with the union they can gain a voice in the workplace and not be fearful of being fired for anything, for any little thing."[13] The irony, of course, is that workers are fired anyway, nor is this an unknown fact, yet by all accounts the awareness of their legal rights does encourage and embolden workers.

When the union files a petition for an election with the NLRB, the secret phase of the organizing drive is over because the employer is notified by the board of the election petition. This then begins the public phase of the drive, lasting roughly four to six weeks from the petition filing until the election date, and it is during this phase that employers mount the first wave of their anti-union campaign. Generally, the first thing employers do is hold a captive audience meeting.[14] A typical case was a union drive at Delta of Tampa in early 2001. At the meeting, managers "just made a lot of, as the workers put it, empty promises they've heard before but have never seen happen," explained Johnson.[15] The specific issues they mentioned included weekend work schedules, which was a major issue

---

[12] Calvin Johnson, interview by author, Tampa, FL, May 30, 2002.
[13] Harrison, interview.
[14] A captive audience meeting is one where workers are required to attend and are not allowed to leave while managers make an anti-union presentation. As noted in chapter 2, one administrative law judge compared these meetings to "verbal carpet bombing"; Brent Garren, "The High Road to Section 7 Rights: The Law of Voluntary Recognition Agreements," paper presented at the American Bar Association annual conference (San Francisco, August 7-12, 2003), 8.
[15] Johnson, interview.

for workers, who had to work two or three weekends in a row before getting a weekend off; and health insurance. It was a sharp rise in health insurance premiums that had triggered the organizing effort in the first place. "They had a staff meeting and they had informed us they were going to change the insurance and that kind of was like the straw that broke the camel's back," recalled Delta worker Richard Chiques, a leading union supporter.[16] At the first captive audience meeting, however, managers said they were looking into other insurance companies with better rates. Both the form and the content of the Delta management's initial response to the union drive were typical. "They always call people into a captive meeting and beg for a second chance," Johnson said in describing employer campaigns generally. "Their favorite line is, 'give us another year, we can get the problems straightened out.' And they're acting real nice to their employees."[17]

One form that this 'nice' tactic frequently takes is feeding workers, which Delta did as well. "The most interesting thing that the [Delta] workers decided to do for themselves" was organize a response to one of these free meals, Johnson reported. "Management had a barbecue for them, and the workers decided they would go to the barbecue, fix a plate, and throw it in the garbage. You know, and that's what they did... .To them, and they were exactly right, it sent a message to management: You can't buy us off with food."[18]

"They got very nice at the beginning and then they tried to get nasty at the end," Chiques recalled.[19] Again, this is typical; the niceness gives way to threats, intimidation, sudden enforcement of policies, schedule changes and other forms of harassment, all tactics meant to inspire fear in workers. In Delta's case, management put a sign over the time clock two weeks after the public campaign had started, announcing that anyone clocking in or out

[16] Richard Chiques, interview by author, Tampa, FL, May 30, 2002.
[17] Johnson, interview.
[18] Ibid.

seven minutes before or after a shift would be written up; prior to the union drive, no one had ever been written up for time clock violations. The union filed an unfair labor practices (ULP) charge over the time clock issue, because the enforcement of rules for retaliatory purposes is prohibited by law. Workers reported to Johnson that their supervisors were giving them extra workloads and "just constantly riding their backs."[20] Managers held many captive audience meetings as well as one-on-one meetings with workers, and distributed anti-union literature. "They started having meetings around the clock," Chiques said, "they were coming in on all shifts... but again, we were prepared that that's what they were going to do... we knew what was going to happen before it happened, so we were pretty comfortable with it."[21]

As Chiques' comment illustrates, the full value of the inoculation process that takes place while the campaign is still underground is realized once management begins its offensive. "It's kind of rewarding to the workers to see the administrators come in on an 11-7 shift because the majority of the workers can see right through the façade," Johnson said, demonstrating how the inoculation process can deprive management tactics of their intended effect. Furthermore, the education about their legal rights that workers get reduces the fear management actions can induce. Johnson cited an example during the Delta campaign where 20 or more workers came outside to receive leaflets from the union even though managers were watching; workers were "not scared of talking to us... because they knew what their rights were, as long as they were off the clock, they had the right."[22]

The union's intense focus on preparing workers for management's anti-union campaign helps them anticipate not just the tactics managers use, such as the captive

---

[19] Chiques, interview.
[20] Johnson, interview.
[21] Chiques, interview.

audience meetings, but also the arguments they employ in those meetings. "The first two common things you will hear an employer say is 'the union only wants your money,' and 'the union will take you out on strike,'" said Johnson,

> and hearing that from an employer, especially here in Florida, it does tend to jolt workers, because they don't understand how a strike comes about... .The majority of workers don't know anything about unions so they don't know anything about union dues.

Union dues and strikes are universal themes in employers' meetings and literature. As Johnson indicated, without the specific knowledge of how strikes come about (they are voted on by union members, not imposed by union leaders) and how much dues are (Johnson said he's had employers claim dues were as high as $200-$500 a pay period; in fact, 1199FL dues are 2% of members' wages, which for a $6.50/hour worker would be $20.96 per month, or for a $9.50/hour worker, $30.63), these are effective anti-union messages. But *with* that foreknowledge, these messages are seen as lies and attempts at manipulation. Both the strike theme and the dues theme were prominent in Delta's campaign in Tampa, as was a third theme that employers often use: that union promises about higher wages and other improvements are empty promises. In the Delta case, Johnson said that eventually the company's anti-union message backfired. Workers "started to question and ask, 'well, if the union is so bad, if the union is going to lose us money, why are you against it?' One worker even said, at one of the meetings that I held, 'well, if the union is so bad, why aren't they rolling out the red carpet, wouldn't that be saving the company money?'"[23]

On February 27, 2001, the workers at Delta of Tampa voted 87 to 28 for the union.

The Delta case was, as already noted, entirely typical in terms of both the form and content of the employer's anti-union campaign. Indeed, it is striking how incredibly similar

---

[22] Johnson, interview.
[23] Ibid.

employer campaigns are throughout the industry; from one to the next, the same themes and arguments are repeated, and the same tactics used. Union leaders pointed out that company opposition to a union organizing drive was the same whether the union had a relationship with the company elsewhere or not, and whether the company was ideologically anti-union or not. "I don't care what kind of relationship you have," said Harrison, "when you organize additional homes, you're going to get a fight, they're not going to roll over and play dead... .Some employers, if they've been real nasty, they'll change and start feeding people. You'll have them buying folk off. Threats. They play on the strikes heavily. They play on the dues issue... *it's all the same.*"[24]

"The thing is, during an organizing campaign, whether management is on principle totally anti-union or not, they're going to run basically the same campaign," said Jennifer Hill, the union's internal organizing director. "They're going to fire— even the nice guys, the supposed nice guys, are going to fire some people... they're going to do all the same lit., they're going to have a consultant and run the campaign."[25] The union's tight organizing model is as firm and established as it is precisely because of this uniformity in employer strategy. It begins, as noted, with a heavy emphasis on education and inoculation, carried out initially in secret while authorization cards are being collected. Once the union drive is public and the employer's counter-campaign has begun, inoculation and education remain central to the union's approach. Added to this is an effort to make the union a visible presence; for this reason leafleting outside at plant gates during shift changes is done generally twice a week. Leaflets and other literature are also a way to reinforce the union's message, and to spread the word about the latest developments in the campaign.

---

[24] Harrison, interview; emphasis added.
[25] Jennifer Hill, interview by author, Miami, FL, June 4, 2002.

Frequent union meetings are also held, usually once a week. These serve several purposes. They are a venue for exchanging information; workers relate the latest management tactics and activities to each other; and of course, this information is crucial to the organizer in keeping track of the overall campaign. Equally important, the meetings offer encouragement and a sense of unity and solidarity; hearing stories from their co-workers, workers realize that they are not alone, and knowing others are standing fast or standing up to the boss emboldens them to do the same. "We don't want to vote in a union, we want to build a union," Johnson said in explaining the importance of meetings as a kind of unifying glue. In meetings with the Delta workers, he said, "I explained to them that some of their coworkers were going to fall for the campaign, but it was up to them to let me know about those workers, so I could go out and visit with them; but it was more important that if they saw one of their coworkers becoming weary that they needed to uplift them, that that's the purpose of a union... a true union, the members look out for each other."[26]

Other nursing home workers, from shops that have previously organized, are frequent guests at the meetings. Organizers and other union officials unanimously hailed these "member organizers" as a very effective source of support and encouragement for workers who are organizing; workers are buoyed by seeing that others like them have been through the same thing at other facilities and— crucially— that they have prevailed. When Unite for Dignity became 1199FL, a full-fledged local, the union began building a formal member organizer program (other affiliates in SEIU and the international have similar programs). To become member organizers, workers have to go through a series of four trainings, after which they graduate. As member organizers, they then participate in the union's organizing drives, doing house calls, leafleting and speaking at meetings. Sometimes

[26] Johnson, interview.

workers from union nursing homes will sign a leaflet, explaining how they prevailed, how things have improved for them since they won the union and expressing support; like member organizers sharing their experiences in meetings and house calls, these messages are meant to encourage workers to believe in themselves and their ability to win.

The initial inoculation process, the ongoing reinforcement of the inoculation message, the outside encouragement from other nursing home workers, and the sense of support and solidarity that is developed through meetings are all aimed at getting workers to believe that they really can win, if they stick together. The employers' tactics, meanwhile, are designed to do just the opposite: discourage workers, isolate and divide workers, intimidate and frighten them, wear them down and make them feel that the union is ultimately a lost cause and will not help them improve their lives. Many of the specifics of employer campaigns— such as captive audience meetings, one-on-one meetings with workers, and much of the content of their anti-union message— are perfectly legal, thanks to 60-plus years of labor law interpretation and precedent that has framed union elections as a contest between the employer and the union (rather than as a mechanism for workers to exercise their right to self-organization without interference, as the Wagner Act was originally interpreted; see chapter 2 for a full explication). Other standard tactics that Florida's nursing home owners use, however, are illegal under current labor law. These typically include firing workers for union activity, threatening workers, and using work rules as retaliatory measures against union supporters.

When employers break the law (or more accurately, when the union believes employers have broken the law), the union usually files unfair labor practices charges (ULPs) with the NLRB. Since (perceived) employer violations of the law are the rule and not the exception, ULPs are a near universal part of the union's organizing campaigns. Pro-union

workers are fired during most drives, and the union files charges. Most campaigns involve multiple charges, most frequently for firings, intimidation, threats, and sudden/retaliatory enforcement of policies. ULPs are generally not decided before an election takes place; indeed, the time it takes to get a decision in an illegal firing case is notoriously long, generally several years. But even quick cases take months, whereas the typical election campaign (from filing to election) takes four to six weeks. ULPs thus do not function to correct employer violations of the law, at least not during the organizing phase. They nonetheless play several roles in 1199FL's union drives, though their overall usefulness is somewhat debated within the union. There are two kinds of effects ULPs have: one is on employers, the other on workers.

"We use it as a get-on-your-nerves kind of program for the employers," Russo explained; it's a time-consuming and unpleasant distraction for nursing home administrators.[27] In addition, union leaders note that some employers dislike having ULPs filed against them so much that ULPs curb their behavior. Harrison noted that Delta was one such employer; "they didn't like ULPs filed against them, period. So they were nasty... [but] when you filed a charge they would back off."[28] Union leaders also see ULPs as a bargaining tool; this isn't usually applicable during the organizing phase of a campaign, but rather afterwards, as an additional source of leverage to try to get employers to the bargaining table. The union can offer to drop its charges in exchange for union recognition from the employer.

In addition to their use as a means to influence employer behavior, ULPs have a second function. For the workers on whose behalf they are filed, ULPs are a concrete example of their determination to have their rights respected. "In terms of the workers'

---

[27] Russo, interview.

perspective," said Russo, "at least you show workers that there is a law and it's supposed to protect your rights and we're going to make it protect your rights. And you get them engaged," she added, invoking another reason union officials see ULPs as a useful tool; they see them as organizing tools, something for workers to rally around.[29] Johnson noted that he usually writes up and distributes a leaflet whenever there has been a violation and a charge filed. He felt this was "effective because now the workers realize that now they do have another option, they do have a way of stopping management from their infractions."[30] A related argument in favor of the usefulness of ULPs is that they give workers a forum (through affidavits and hearings) in which to tell their stories and have them treated with respect. "One other thing about ULPs: it's good for leaders to be listened to," said Hill at the end of an enumeration of the tactical benefits of using ULPs.[31] It bears repeating that none of the useful functions of ULPs for 1199FL derive from their efficacy in enforcing the law or protecting workers' rights.

Hill is the union's biggest advocate for using ULPs:

> I don't really understand why, but the ULP charges have been very helpful on most of our campaigns. Not because the NLRB is a great institution that's going to rule with us all the time, but it does bug employers. I don't understand why it bugs them that much, it's not that expensive; but I guess their lawyers bill them for a lot of hours.... As a tool, I think it's a tool we should utilize more and be more aggressive with.[32]

At the other end of the spectrum is Dale Ewert:

> I'm a skeptic on ULPs, frankly. It's a tool so you use it. When something happens, you don't turn your back on [it]. And it's more or less effective, depending on who you're faced with. There are certainly some employers, and these tend to be the ones we already have a relationship with, who will respond to the filing of a charge... .So it's a tool that can be valuable. I haven't frankly noticed that the Avantes of the

---

[28] Harrison, interview.
[29] Russo, interview.
[30] Johnson, interview.
[31] Hill, interview.
[32] Ibid.

> world, the pre-Melbourne Avantes, the Mt. Sinai-St. Francises of the world or various other employers of that ilk are especially affected by a campaign of ULPs [more on these employers below].

Ewert also cautions that the usefulness of a ULP as an organizing tool is offset "when nothing results from it"; "nothing" meaning the long delays in getting rulings, the meaningless remedies that do nothing to change or thwart employer behavior, and the small amounts of back pay awarded in cases of unlawful firings.[33]

The difference between Hill's and Ewert's views on the subject is a matter of degree, not a real strategic disagreement, and other union officials fall somewhere in between, most expressing views more akin to Hill's. Everyone agrees with Ewert's point, "it's a tool so you use it," and likewise with Russo's caustic observation, "I would hardly say it's a huge weapon in our arsenal," as well her comment that "it's the only thing we got, it's one of the only tools."[34]

Ewert's comments on ULPs note an important differentiation between two types of employers, those who react to ULPs and those who simply ignore them. Thus far this narrative has emphasized the similarity, indeed the uniformity, among nursing home employers in how they counter the union's organizing efforts. But there are a number of differences: employers who care about ULPs filed against them versus those who don't, employers who will file objections to the union election versus those who don't (more on this below, since it's in the post-election period), employers who will fire workers versus those who don't. The similarities among employers are far greater than the differences— they universally oppose the union, and use the same tactics and messages to try to defeat it— but

---

[33] Ewert, interview. In terms of back pay, workers are entitled to back pay back to the date of their illegal firing, *minus interim earnings*. Since workers scramble to find another job as quickly as possible, for obvious economic reasons, the actual amount of back pay is usually disappointingly small and rarely makes workers feel like justice has been served.

[34] Ewert, interview; Russo, interview.

the differences are significant nonetheless, and they basically boil down to the lengths to which employers are willing to go in order to defeat the union, and behind that, the level of ideological opposition that fuels their actions.

Delta, as noted above, is one of the employers that responds to ULP charges being filed against it. 1199FL has organized four Delta homes; the Tampa drive was followed by winning elections in Maitland (Maitland Healthcare) in May 2001, Melbourne (Carnegie Healthcare) in July 2001 and Orlando (Oaks of Kissemmee) in September 2001. The company certainly fought the union, as is clear from account above, and ULPs were filed in three of the four campaigns (Oaks of Kissemmee was the exception); but Delta did not fire anyone and in general, organizers said the company "was more staying within the guidelines of the law."[35] This is the one type of employer, those that Ewert said "would just prefer not to be union but there are lengths to which they are not going to go."[36]

On the other end of the spectrum are employers like Avante, for whom seemingly no labor law violation is too great to refuse to commit. At Avante Lake Worth, the union won an election, 77 to 24, in November 1998, despite a vicious anti-union campaign. The employer filed objections to the election, claiming that workers (the majority of whom were Haitians) did not know what they were voting for because the NLRB-provided translator arrived late on election day. The NLRB upheld the objection— despite the fact that it had the effect of disadvantaging the union even though the union had done absolutely nothing wrong, and despite the fact that workers testified that they knew exactly what they were voting for. A rerun election was held in March, but that meant workers had to endure several more months of vicious anti-union attacks by the company, giving the company that much more time to siphon off workers. Nevertheless, workers again voted the union in, this time

[35] Harrison, interview.

by a margin of 56 to 16. In the course of the campaign, the company fired some 20 workers, including six the day before the election.[37]

Yet Avante workers did win— twice, no less. The bottom line is that the Unite for Dignity/1199FL campaign has been tremendously successful in terms of its ability to score election victories year after year. As noted, its NLRB win rate, 82%, is over 50% higher than the national NLRB election win rate. At the most fundamental level, this success is rooted in nursing home workers' ability to develop a collective identity and to recognize the power they have when they act collectively. Through the organizing process they come to see and believe that their roles in making the nursing homes function are valuable and crucial, and that if they act together they have the power to change their circumstances. They use the language of solidarity and not of collective action, but the point is the same: as collective actors, they have a chance to take on and win against their employers. Harrison summarized it thus: "We win because workers want to win. We win because workers along the way, workers become empowered, and they realize that they don't have to take back seat, and that without them, it wouldn't be a nursing home."[38]

Union officials universally credit workers' desire and determination to get a union as *the* crucial factor in their winning record, and they've designed their organizing model accordingly. Translated back into the language of power relations between actors and the conditions necessary for collective actors to realize power in a relationship, this emphasis makes perfect sense, and its soundness is borne out by the union's success. Of course, it's not quite as simple as workers acting together, taking on their boss and winning. Indeed, 1199FL's organizing model is deceptively simple. In the organizing phase, the work is

---

[36] Ewert, interview.
[37] Russo, interview.
[38] Harrison, interview.

focused very directly and intensely on the workers; there is generally no media campaign or effort to involve other unions or consumers, nor any corporate campaign tactics. Yet in several significant if not readily apparent ways, the organizing model does draw several other relationships into the worker-employer relationship in order to strengthen the workers' hand in their struggle for union rights. Workers' desire and determination for a union is certainly the central factor, but union success also depends on third parties.

The first of these is the state, specifically the NLRB and the labor law statutes it is charged with enforcing. Compared to the law's inability to substantively protect the right to, the law's positive role for workers seems small. But it is nonetheless real. Most important in this regard is the simple mechanism of setting an election date and having the ballots reliably counted (yes, even in Florida). What this means above all for workers is that there is a concrete marker for them; they know that they just have to persevere until a certain date and if they vote yes, they've won. Compared to the process that comes afterwards (see next section), this legal guidepost gives them a tangible measure of progress. The law also plays a role in helping workers overcome their fears and assert their rights; this happens both through the education phase of a campaign (in which, as noted, the union emphasizes workers' rights under the law) and through the use of ULPs. It is noteworthy that the law, while largely failing to substantively protect the rights of workers to organize, nonetheless helps them organize by its very existence on paper.

The second third-party role is that of the union itself. I've implicitly treated the union and the workers as interchangeable in terms of the relational analysis of the parties involved in a union organizing struggle, and I think this is generally correct. However it's useful to differentiate the two here, in order to illuminate the inner process that allows for the creation of the union *qua* collective actor. The union staff play an absolutely critical role in making it

possible for workers to turn their desire for a union into an election win. Through the inoculation process, education, meetings and bringing workers together, the legal expertise in filing ULPs, the facilitation of information sharing, etc., it is the organizers who provide the catalyst that helps workers realize their identity and power as collective actors. If collective action by subordinated groups requires overcoming inherited scripts, it's the union that comes in and says 'you can write your own script'.

The employers, for their part, have the bulk of the labor law apparatus working in their favor as they fight to keep the union out. By giving employers more or less a free hand in how they can conduct their anti-union drives— by allowing a considerable range of actions, through weak enforcement and almost meaningless penalties— the state is effectively allied with the employers. To remain neutral in the fight between the powerful and the powerless is to side with the powerful, as the old observation goes.

Of all the anti-union weapons the current state of labor law allows employers, none is more effective and devastating to workers' aspirations than deliberate manipulation to delay the process. In this regard, the law is at its strongest as far as helping workers goes in the period before the election; elections are scheduled and actually held in a relatively timely manner. Once the election is over, however, the NLRB's capacity to ensure prompt or reasonable proceedings is virtually non-existent.

IV. First contracts: "Years in never-never land"

There are two phases after a union election en route to a contract. The first is legal recognition of the election victory through NLRB certification; this can be pretty straightforward and automatic, but is often a long fight in itself because employers will

challenge the election results through a series of legal objections, which delays certification until they have been investigated and dismissed. The second phase is the actual bargaining process to produce a contract. Reaching a first contract ultimately depends on good faith participation by both parties and is also a process that can take a long time. From a legal point of view, the election and certification pieces of organizing go together because they constitute the piece of the process leading up to the union's designation as the official bargaining agent. But for analytical purposes here I have divided the process at the point of the election, because it is that point which demarcates a shift in the union's strategy and the mobilization of a different constellation of third parties.

In general, it takes more to win a contract battle than it does to win an election battle. Elections can be won with grit and determination, but contracts, "that's another story," as Russo put it. Workers' determination is not enough to prevail here. "You can win elections without getting the community and all involved," said Russo, "but you can't win a contract easily without getting the community involved, or getting some sort of coalition. It's much harder."[39] In moving from election to certification to contract, workers' determination is, in the classic formulation, a necessary but not sufficient condition.

Employer behavior in the contract phase is not as uniform as it is in the election phase (a point to which I shall return) and as a result, the union does not have as set a model for contract campaigns as it does for election campaigns. There are, however, some common elements to these campaigns. They have both "inside" and "outside" components. The inside campaign consists of "slowly, gradually escalating shop-floor tactics," explained Hill. It begins with electing a negotiating committee, developing bargaining proposals in the

[39] Russo, interview.

committee, and making a formal presentation of demands to the employer. After the employer's initial response,

> then do, say, purple Fridays, start that going... trying to do a petition or two around some key issues, a couple of marches on the boss. Often they're filing ULPs... because there's generally retaliation in the first contract campaign... .Then a couple of pickets and then hope you get a contract... .There's a standard use of tactics, but not what I think of as a campaign model. [40]

"Purple Fridays" are pre-arranged days when everyone wears an SEIU shirt to work as a show of solidarity (the shirts are purple).

The outside campaign varies in its specifics, but almost universally includes "a couple of pickets," demonstrations where community members join workers and press coverage brings the issue to a wider audience. In broadening the struggle beyond a particular nursing home's workers and the union's membership more generally, the union has several advantages to draw on. The first is "the incredible leverage you have with the public," as Russo put it.[41] That comes from the connection between nursing home working conditions and conditions for nursing home residents— a connection that nursing home workers and the union stress, but that is fairly obvious even without efforts to draw attention to it— and the fact that almost everyone can readily imagine either themselves or their parents needing nursing home care at some point. "Our members' issues more naturally play to a broader audience... . things that might in another context be dismissed as labor issues and 'we don't care' suddenly become issues of broader community concern," said Ewert.[42] A related advantage is the sensitivity nursing homes have to bad press; and thus the union keeps its contract struggles in the public eye as much as possible through its media strategy. Press

[40] Hill, interview.
[41] Russo, interview.
[42] Ewert, interview.

exposure gives the union credibility and stature, which "elevates us both in the workers' eyes and the employers' eyes."[43]

In addition to general public concern, the union has been able to mobilize several particular communities in support of its campaigns. Immigrant communities, most notably the Haitian community in south Florida, have been their steadfast allies. The union also has ties in African-American communities. It is these communities whose members work in the nursing homes. Civil rights organizations, led by the NAACP, have also been important allies. Drawing a parallel to the public concern about nursing home standards, Ewert said,

> Again, it's the ability to take what in other places might be dismissed or isolated as a union issue and translate it into a broader community concern. On the one hand, a universal concern about healthcare and healthcare issues, and on the other, on the other hand, a translation of worker issues into immigrant rights issues, issues of race, ethnicity. And so those communities in particular have played an important role in the work.[44]

Longstanding relationships with community organizations and consistent political support for their issues means "when it comes time to call on... the community to support the workers, there's an outpouring of support because of the long history."[45] That means bodies at rallies and marches, but also ministers leading candlelight vigils and community leaders and politicians sending letters to CEOs.

The efficacy of the community pressure on employers varies:

> The bosses are still largely from the majority community, and so to the extent that minority issues are not taken seriously, disrespected, you know, our effectiveness varies from situation to situation. I think Mt. Sinai is concerned that they've raised this issue that's snowballed out of control but it hasn't altered their behavior yet [more on this case presently].[46]

---

[43] Russo, interview.
[44] Ewert, interview.
[45] Russo, interview.
[46] Ewert, interview.

This brings us back to the variation in employer behavior in the post-election phase, and the Mt. Sinai-St. Francis case illustrates several of the key points of difference. The first point of variation is whether the employer challenges the election. "Some employers just don't file objections," explained Russo, "when we find the employer and the law firm they use, you know who's going to file an objection."[47] This correlation between the ownership and law firm involved and the filing of objections also suggests what union leaders have long claimed: that objections are not filed in response to actual objectionable behavior, but are rather manufactured in order to delay the process

In the Mt. Sinai-St. Francis case, the nursing home is represented by one of the firms identified by Russo as consistently filing objections, Allen, Norton & Blue. A week following a February 28, 2002, election, which the union won b a 49 to 37 vote, the nursing home filed objections. The objections alleged "impermissible electioneering, threats and intimidation" on the part of union representatives and stated that union supporters had "improperly harassed, threatened and intimidated employees" to vote for the union.[48] There were no specifics cited in the 10-line complaint; Russo called them "boilerplate objections."[49] The NLRB scheduled hearings pursuant to the employer's complaint. When union supporters and officials arrived at the hearing on March 25, they found out that the company was claiming that the union had used voodoo to win the election in the largely Haitian shop; specifically, that a union organizer and a worker who was a union supporter had created a climate of fear and reprisal through their use of voodoo, "making a free and fair election

[47] Russo, interview.
[48] Mt. Sinai-St. Francis Nursing and Rehabilitation Center, "Employer's Objection to Conduct Affecting the Results of the Election" (Case No. 12-RC-8749, before the National Labor Relations Board Region 12).
[49] Russo, interview.

impossible."[50] Mt. Sinai-St. Francis asked that the election be thrown out and a new election ordered. Union supporters were outraged at what they saw as racist tactics by the nursing home, an outrage that was shared by the larger Haitian community, where the issue got extensive press coverage. The NLRB dismissed the employer's objections in their entirety in a May 17 decision.[51] By this time, community and religious leaders had gotten involved and called on the nursing home to drop its objections, vigils had been held and AFL-CIO Secretary-Treasurer Richard Trumka had visited the nursing home (management activated the sprinkler system and blockaded the employee exit to keep Trumka from the workers). Nonetheless, the home appealed the board's decision in June, delaying certification and bargaining indefinitely. The union escalated its public campaign; in July, actor Danny Glover came to Miami and added his voice to the call for the employer to drop its racist tactics and sit down and bargain. In December, the company finally agreed to drop its objections, and a contract was reached in February 2003, a year after workers had voted for the union.

> "The biggest thing [employers] do through the board is the delay," said Russo,
>
> That's the most vicious and heinous thing they use. Just like with the Mt. Sinai workers... . And then they waste taxpayer dollars, and then the hearing officer has to write a 50-page, or something like that, decision... .It's obnoxious. And then— so that takes another two months; and now they can appeal it, which will put us into the years mode... .You just go years in never-never land.[52]

The objection and appeals process makes the labor board the *de facto* ally of employers who are willing to spend the money on the lawyers it takes to keep on appealing. Even when the board throws employer objections out wholesale and issues harshly-worded rebukes, the appeals process allows employers to continue to delay union recognition.

---

[50] Mt. Sinai-St. Francis Nursing and Rehabilitation Center, "Employer's Brief in Support of Objections to Election" (Case No. 12-RC-8749, before the National Labor Relations Board Region 12), 3.
[51] "Hearing Officer's Report and Recommendations to the Board on Employer's Objections" (Case No. 12-RC-8749, before the National Labor Relations Board Region 12).
[52] Russo, interview.

Underlying variations in employer tactics like whether they file objections to an election or not is a more fundamental difference, the same one noted in the previous section: some employers merely prefer not to have unions, while others are dogmatically committed to keeping them out. Winning first contracts is difficult under any circumstances, but it is certainly easier with companies "that don't have that whole philosophical shit," as Hill bluntly termed it.[53] The two shops discussed earlier, Delta of Tampa and Avante Lakeworth, illustrate the range of employer behavior in the post-election period and offer typical examples of the two types of employers just noted.

It took workers at Delta of Tampa eight months to get a contract. The process was aided by fact that negotiations for the Tampa facility ended up being combined with first contract negotiations at the three other Delta facilities organized that year (Maitland Healthcare, Carnegie Healthcare and Oaks of Kissemmee). Additional negotiations between Delta and 1199FL were simultaneously being conducted at Berkshire and Fountainhead, two union facilities that Delta had bought. "There was two [negotiating] tables but it was basically all running on the same track," as Hill put it.[54] Contracts for all six shops were concluded together in October 2001.

Workers at Avante Lake Worth, however, waited almost four years to get their first contract. Following the second election in March 1999, Avante again filed objections to the election, and the union was on the road to "years in never-never land." Then two things happened that changed the situation. First, the head of the company, whose ideological opposition to the union had been driving their legal challenges, left. Union officials said it was unclear whether he left voluntarily or was ousted, but, said Ewert, "the people who were left, my impression of them is not that they're pro-union, but they question the wisdom of

[53] Hill, interview.

spending tens of thousands of dollars in protracted legal battles." The shift in attitude became clear in the wake of the other change, which was Avante's purchase of a Beverly nursing home in Melbourne that had organized and was in first contract talks at the time of the sale. "The workers in the union I think played it exactly right," Ewert said,

> the workers went in a group to the company and said, "we're glad to see Beverly gone, we're glad to have you in here, we're happy to work with you and cooperate with you, but you should know that we've got a union and we're going to keep it." And that approach, combined with the change in leadership at Avante, got us a contract for that facility.[55]

With Avante Melbourne settled, the union revisited the Lake Worth situation with the company and negotiated a settlement on the firings/ULPs, including over $90,000 in back pay for workers, and recognition of the union. That was in December 2000. Negotiations began shortly after that, but although the certification and ideological hurdles had been cleared, the company wasn't quite ready yet to get down to earnest bargaining. They continued to test the workers' resolve in a number of ways. They continued to fire people; they also tried to take away purple Fridays, which workers fought; and they refused to budge from a 1% wage increase offer for over a full year. The union, in turn, continued to file ULPs and the workers did not back down. "When a year went by and they knew they weren't going to get away with a decert, they just decided they needed to get a contract done and move on," Hill said.[56] The contract was settled in May 2002.

In cases where bargaining for a first contract gets rolled into ongoing bargaining at other facilities in a chain, it can take as little as a few months to win a contract. Without this help, a first contract campaign takes six months as an absolute minimum. In cases like Avante Lake Worth, where objections and appeals forestall certification and surface

---

[54] Ibid.
[55] Ewert, interview.

bargaining further delays the process, it often takes years. Despite the difficulties, the Unite for Dignity / 1199FL campaign manages to secure first contracts in 82% of their homes. That compares favorably with the overall national rate of first contract success, which is roughly two-thirds.[57]

In an election campaign, the decisive factor determining success is the workers' determination; the roles of third parties, while important, are not immediately obvious. In the contract battle, however, it is clear from the outset that workers cannot win on their own. The single biggest difference between the two phases of the campaign is that the apparatus of labor law, while largely favoring employers, does provide some help to workers in the election battle, but works overwhelmingly to employers' benefit in the contract struggle. The ability of employers to manipulate the legal process to delay any bargaining combined with the inability of the labor board to curtail any of these practices even when it clearly recognizes them, leaves workers virtually no legal recourse. At no point does the law require an employer to sign a contract; by contrast, it can compel an election.

Against employers who are anti-union but not dogmatically so, workers prevail against these odds by enlisting community allies and bringing public scrutiny to their cause. "In most cases employers are motivated to deal with us once they lose the election because they know we have community and political resources, not enough to crush them, but enough to make them miserable, and they choose not to be miserable," said Ewert.[58] Union density within a company is also a factor, both because it gives the union additional leverage and because it reflects a past willingness on the company's part to deal with the union; it may

---

[56] Hill, interview. A "decert" is a decertification election. Workers may vote to decertify the union after one year if a first contract has not been concluded yet. In practice, decertification attempts are most often orchestrated by the employer.
[57] Kate Bronfenbrenner, Sheldon Friedman, Richard Hurd, Rudolph Oswald and Ronald Seeber, eds., *Organizing to Win.* (Ithaca: ILR Press, 1998), 5.
[58] Ewert, interview.

also facilitate multi-unit bargaining, which can ease the process and make it less resource-intensive. With some employers, ULPs may also help bring them to the table, allowing them to settle cases in exchange for union recognition.

In the end, it may come down to convincing employers that the only way not to be miserable is to settle with the union. Here again the determination of the workers is a critical factor; as is the perseverance of the union, its willingness to wait out appeals processes, if necessary, and re-organize shops. For those employers who choose to stay miserable instead of giving up their "philosophical shit" it's unclear what, if anything, can really bring them to the table. At any rate, with very few exceptions, each first contract requires a pitched battle and many months or years to win; and with 700 nursing homes in the state, it's clear that nursing home workers may win many of these battles but can never win the war this way.

V. Political action: "We're running the movement, too"

"If you're trying to build power for nursing home workers," said Ewert, "you can't do it one home at a time... .The weight of NLRB elections and the weight of individual home-by-home negotiations will kill you."[59] The experience of doing just that, shop-by-shop organizing and bargaining, has led the union to consciously engage in politics as a necessary component of its organizing program. While Unite for Dignity had always been involved in political issues affecting its membership, in 2001 the union began investing in a much more systematic and extensive political program.

From its earliest days, Unite for Dignity has been involved in immigrants' rights and civil rights issues. From protests against INS treatment of Haitian refugees to

[59] Ibid.

demonstrations against the disenfranchisement of Florida voters in the historic 2000 election, the union has been a visible part of many community coalitions and actions. In 2000, they were a prominent part of the massive resistance mounted by Florida's communities of color against Governor Jeb Bush's elimination of state affirmative action programs. Union leaders led demonstrations outside a sit-in in the governor's office staged by two state lawmakers; they participated heavily in the march on Tallahassee in March 2000 protesting the Bush executive order; and newspaper photos from the *Miami Herald* to the *New York Times* showed UNITE and SEIU members and leaders again and again. The union's presence at immigrants' rights demonstrations is equally consistent and obvious. Its association with the Haitian community is particularly close, and it frequently works with community organizations like the Haitian-American Grassroots Coalition and Haitian Women of Miami. Unite for Dignity and 1199FL have also been part of various living wage campaign coalitions; in January 2002, for instance, hundreds of the union's members joined a "poor people's march" in Miami, drawing attention to the fact that the city has the nation's highest urban poverty rate (32%) and calling on the city to pass a living wage bill. The *Miami Times* called the event "an unprecedented coalition of community leaders, elected officials, unions, students, grassroots organizations and working families."[60]

The union's involvement in the communities of its members is more than a mutual support for each other's issues. The union is a constant presence in the community, and union leaders and members frequently appear in community fora, from Haitian radio stations to churches. As a result, "UNITE for Dignity and SEIU are really seen in a lot of

[60] *Miami Times*, January 16-22, 2002.

places as a civil rights organization as much as [a union]... that gives us credibility with community leaders, it gives us credibility with the workforce. We're not outsiders."[61]

In addition to giving the union credibility and helping it win organizing drives ("we wouldn't win Haitian facilities if we didn't have the reputation that we have in the community," said Russo), this social justice orientation gives the union a kind of stamina in both its breadth and depth. On the one hand, workers identify their own struggles with broader struggles and they see past their shop to a larger cause. On the other hand, because the work of justice is never done, they are steeled for battles that take years and years to win, where one hurdle after another is thrown in their way. A movement orientation is one that assumes that the struggle is ongoing and the battles are never over. Said Russo,

> We sustain ourselves because we are very much movement oriented... .I think our community-based model is very important to our sustenance... .So for the workers the union is more than what you do at the bargaining table... .The workers get a sense that the union is fighting back, even if we haven't reached the promised land. And I think that's really, really how we sustain ourselves.[62]

The strength that this community-rootedness has given 1199FL— in addition to the concrete help of allies who support the union's election and particularly its contract campaigns— has also led the union to make a conscious effort to help build and maintain a left political infrastructure. It's a fairly straightforward calculation that the union's base of support will be wider and its potential to mobilize allies greater when there are more organized community groups and when there are more connections between individual groups. The union's overall assessment of the political landscape is that there is an "incredibly underdeveloped progressive community."[63] Russo noted that the labor movement overall is weak, union density is low, and ethnic community activism is splintered.

---

[61] Ewert, interview.
[62] Russo, interview.
[63] Russo, interview.

Seniors and retirees, meanwhile, are surprisingly underorganized.[64] All this means, to 1199FL, "that our job is not just to run an organizing campaign and then be a labor union and represent our members, but we're running the movement, too. And not from any kind of title or anything like that... but we're in a position of having to play a major leadership role within the progressive movement." [65]

As part of the effort to help bolster the "progressive movement," the union has helped start and support several new institutions with the explicit aim of strengthening the movement's infrastructure. When Unite for Dignity became 1199FL, the union spun of a 501c3 non-profit group under the old name Unite for Dignity. That name by then had great name recognition in the community so a new institution with that name was valuable. The new non-profit, based in Miami, is dedicated to immigrant community issues. In 2002, 1199FL was instrumental is starting another group, a local chapter of Jobs with Justice. As in many of the other places where this national union network has affiliates, Miami Jobs with Justice is a coalition of activist unions and community groups who are organizing together to provide an unofficial alternative to the more conservative and moribund Central Labor Council. In general, the union's strongest ties are in southern Florida, and particularly in Miami, where the campaign began. Like the organizing itself— which spread from Miami north to Broward and then Bevard Counties and Orlando, and up the Gulf coast from Naples to Tampa— the most developed webs of relationships are where the union has been the longest.

All these movement- and community-oriented strategies are crucial to the union's overall strength and are critical long-term investments, but they do not solve the union's more immediate problem of getting beyond home-by-home organizing and bargaining.

---

[64] Ewert, interview.

Russo painted a picture of just how challenging that situation is: "We win 12 elections, that's 12 dag-gone contracts, so that's 12 World War IIIs. Maybe we get a World War I or World War II in there, but most of the time it's like— so how do you do *that* and have the reps servicing?... And still keep winning."[66] Furthermore, frequent changes in the ownership of nursing homes mean additional contract negotiations, because when a new owner takes over a home a new contract must be negotiated. Sometimes these negotiations can be as bruising and difficult as first contract negotiations. "More often than not," said Ewert, a new owner wants to get concessions in the process; "so we're constantly fighting to protect what we've got, rather than moving forward."[67] It's not just that the home-by-home battles (not to say house-to-house combat...) are time-intensive in a way that prevents the union from being able to build sufficient density in anyone's lifetime. These pitched battles are also resource-intensive, and resources are a huge issue for the union. The union has only two full-time organizers and a half dozen field representatives; it receives additional staff support from the international in the form of two to four "organizers in training" in any given period, who work on the campaign in three-month stints. In part because it represents low-wage workers, 1199FL's dues income is insufficient to run the union, and it is subsidized by the international. Generally speaking, however, the subsidy money is earmarked specifically for organizing (in the narrow, NLRB-election sense), which means that resources for first-contract bargaining are particularly tight. "What makes it harder is the fact that we're so limited in our resources. That's why... the political piece becomes so important in that stage."[68]

---

[65] Russo, interview.
[66] Ibid.
[67] Ewert, interview.
[68] Russo, interview.

There is a second reason why "the political piece," meaning generally the union's efforts to build a political machine and specifically the union's legislative work, is important, and that is the industry's dependence on government funding and regulation. From wages to staffing levels, nursing home conditions are as much a product of the political arena as they are of the economic marketplace.

Ewert summarized these two motivations for the union's political work:

> As I see it there are two reasons why you do it, politics: The first is... in the end nursing home workers are really quasi-government employees. They work for a private employer, but that private employer is almost entirely subsidized by government money. So if you can move money into the nursing homes through the government then you can get it from the employers and raise conditions for the nursing home workers. It's not really a free market, it's dictated by what the government's willing to pay for nursing home services. The second reason to move a political program is that the only way we break out of this 12-homes-a-year box and home-by-home-by-home bargaining is to find a way to engage the industry on an industry level, and we think the best way to do that is through politics. By showing either that we have the ability to block things that they need, therefore force them to talk to us, or by showing them that politically we can enable them to get things they have to have but therefore need to deal with us in order to get our cooperation to do it... .Our best chance of getting industry-wide, corporate-wide or industry-wide, agreements that will allow us to organize on scale are going to come from our political work. It's not the only path in that direction but it's probably the path that's most likely one to get us where we want to go in a reasonable amount of time.[69]

The union's massive commitment to building a political program is thus a direct result of its search for effective organizing strategies. In 2001 they hired a political director and began to more systematically develop a political apparatus to get out of the "12-homes-a-year-box."

The single biggest and most successful effort of 1199FL's political program so far has been its mobilization for a Florida state bill in 2001 that increased staffing ratios in Florida nursing homes. Unite for Dignity had supported state legislation calling for an increase in nursing home staffing levels for four years before the 2001 legislative session finally passed the measure. The crucial difference was a crisis in liability insurance that

---

[69] Ewert, interview.

pushed the issue of nursing home reform onto the front burner in Tallahassee and pitted various lobbying constituencies against each other.

The industry's solution to skyrocketing liability insurance rates, backed by Governor Jeb Bush and other Republicans, was tort reform. Tort reform was vehemently opposed, in turn, by the trial lawyers. The union saw its chance to raise its own issues and take advantage of the split in Tallahassee. "While they were duking it out on tort reform or no tort reform, we had a chance to talk about staffing and the root cause of the problem. You wouldn't have to have these lawsuits and these insurance problems if you just had enough staff to take care of the residents," explained Russo.[70] SEIU wrote and released a report, documenting the crisis in the quality of care among Florida homes, reporting the research that links short-staffing and poor quality care, and making the case for both increased staffing mandates and better wages (better wages help with recruitment and retention, which improves care). By the hundreds, union members lobbied and rallied in Tallahassee. They also testified at legislative hearings, and thousands signed postcards and petitions and called their legislators.

The intensity of the union's efforts, and the number of members involved, combined with the fact that nursing home reform was *the* hot issue in the Florida legislature in 2001, made 1199FL highly visible. Amidst headlines like "Nursing Home Battle rages at Capitol" and heated debate and acrimony so intense that at one point one lawmaker sent a gift-wrapped box of 25 pounds of cow manure to an industry lobbyist, the union took full advantage of the attention focused on the issue and used that attention to shift the discussion to its issues.[71] Union press conferences were filled with workers holding signs like "I earn $6/hour to care for your grandma," with those images being reproduced the next day

[70] Russo, interview.
[71] *Miami Herald*, April 20, 2001; *Gainsville Sun*, May 3, 2001.

in papers all over the state.[72] In lobbying before legislators, reported Russo, "the workers would straight up say... 'just think about you may be in a nursing home one day and I may be the one looking after you, and I'm making $7, $8 an hour and have to work two jobs, and I'm going to be stressed out and tired and not have time to give you the love you need.'" According to Russo, that had a jarring effect on more than one legislator, and "we've also gotten Republican support because of that."[73] The union's aggressive and highly visible campaign on nursing home reform transformed the debate in Tallahassee and put 1199FL on the political map.

But the union gained more than increased visibility for its issues and its members in the 2001 nursing home reform debate. It actually *won* increased staffing levels for nursing home workers. And along the way, the public image of nursing home caregivers changed. "Prior to being organized," said Russo,

> the caregiver was the criminal— you know, you see those ads on TV, "is your mother or grandmother abused, neglected, dehydrated?"... But now, we've been able to... put a human face on the caregiver, who is now a *saint*, going through what she goes through, not being able to provide for her own family and yet giving love to those who don't have anybody else to love them... .So the workers themselves have been the voices in our political work.[74]

Those voices were greatly amplified by the tremendous media coverage that nursing home reform got in 2001. The union, of course, took advantage of the heightened attention the issue received from the media, as well as the legislature and the public, and made its case for increased staffing and wages in a media-savvy way. "Our union has so much visibility and presence through the press work," said Russo, "so we're way bigger in people's eyes than our

---

[72] *Tampa Tribune*, April 25, 2001.
[73] Russo, interview.
[74] Ibid.

numbers. It's all about power. We're tiny. We're like teeny-weeny, itsy-bitsy, we are. But... the press just amplifies."[75]

The press amplified the union's voice in the debate around the reform bill, but the fundamental source of its influence on the issue came from its ability to leverage the relationship between the nursing home industry and its insurers. It was the liability insurance crisis that gave the issue legislative urgency, giving the union a chance to press the concerns it had been unsuccessfully raising for four years. Behind the insurance issue, there was the substantive matter of poor treatment and neglect of nursing home residents— i.e., underlying the relationship between the industry and the insurers was the relationship between the industry and an interested public *qua* potential consumers of nursing home services— and by linking the interests of workers to the interests of consumers, the union broadened and strengthened its ally resources, and increased its power vis-à-vis both the legislature and the industry.

That is precisely the goal of 1199FL's political program, and the 2001 nursing home reform bill is a model for successful political action. The union's ultimate goal is to build enough political capacity to be able to engage the industry not just on regulatory or reimbursement issues, but on union rights issues as well. Because the mechanisms of labor law make it impossible to organize the industry (as opposed to organizing a far smaller number of individual nursing homes), the union has to find other means to win industry-wide agreements. Their best chance of doing that is through politics because of the significant interdependencies on the one hand between the industry and the state government (through funding and regulatory issues) and on the other between the state government and the union's members (through the electoral and legislative processes). The

[75] Ibid.

latter relationship is further mediated by the union's relationship with a sympathetic and interested public, which in turn has a relationship with both the industry *qua* potential customers and the government *qua* voters. It is the density of interdependence in these social relations that make the political arena the union's best venue for leveraging power over the nursing home industry.

VI. Conclusion

"For us to be successful here is very clear that we have to have this multi-faceted approach, because we can't just win at the bargaining table. It's impossible," Russo emphasized.[76] Even though 1199FL can and does win union elections and first contracts—indeed, it is more successful than most— it cannot build meaningful power in the industry this way. The process it takes to win elections and contracts is just too time-intensive and resource-intensive. Even *with* the mobilization of third parties, this problem cannot be overcome. The union has drawn into its relationship with employers strong and deep relationships it has in multiple communities, and it has additionally utilized media relationships to augment its pressure on employers. Still, it can never organize on scale in this manner, as Ewert noted.

Thus the political component of the union's work is essential if the union is to have any chance at long-term success. The state is both the problem and the potential solution, in a manner of speaking. On the one hand, the state *qua* NLRB and the apparatus of labor law, is a *de facto* ally of the employers, and that alliance effectively prohibits union success in organizing. On the other hand, the state *qua* the regulatory and funding apparatus of the

[76] Ibid.

nursing home industry creates a series of interdependencies that potentially allows the union to regain the power it has lost through the development of labor law. Either way, the state emerges as the crucial third party that determines the union's fate.

The good news for union organizers in the Unite for Dignity/1199FL case is that the density of state-related relationships has given the union disproportionate leverage. Though it is, comparatively, "teeny-weeny, itsy-bitsy," as Russo put it, the union has achieved both visibility and successful nursing home reform through its activation of this web of relationships. At the time the 2001 legislation was passed, it gave Florida the highest mandated staffing levels of any state in the country (since then, New York and California have passed laws increasing their staffing ratios).[77] In a conservative state, with a weak labor movement, a Republican legislature and a Republican governor, that is an impressive feat. Successes like this are why political strategies like 1199FL's are increasingly popular throughout the labor movement.

While the union's 2001 legislative victory was indeed a promising omen, it remains to be seen whether 1199FL can succeed in using its political strategy to achieve the industry-wide agreements on union recognition that it is seeking. Moreover, the particular constellation of forces that made 1199FL's 2001 victory possible may be too unique to hold out much hope for other unions faced with similar situations. The highly regulated nature of healthcare industries offers leverage possibilities that do not exist in many other industries. In addition, the liability insurance crisis added the extra layer of leverage that 1199FL needed to move an issue that in previous years it had failed to move. It seems clear that political strategies are indispensable to the labor movement, given the dual problems of hostile

[77] SEIU, *SEIU 1199 Florida/Unite for Dignity* newsletter, August 2001, 1; Russo, interview.

employers and ineffective labor laws. It is less clear that they can succeed on a scale that helps labor rebuild the power and the numbers it has lost in the last three decades.

CHAPTER 4

Labor's ace in the hole: Casino Organizing in Las Vegas

I. Introduction

A potent combination of unusual labor market characteristics and developments in the gaming industry has made Las Vegas the biggest organizing success story in America in the last quarter century. A steady and significant growth in the ranks of HERE Local 226, which has represented casino workers in Sin City for decades and is known locally as the Culinary Union or simply Culinary, began in 1989. That was the year that the Mirage, the first of the big mega-resorts, opened, ushering in a new era in Vegas; and it opened as a union hotel after workers chose Culinary representation through a card check process under conditions of employer neutrality. The 3,300 Mirage employees who joined the union in 1989 were followed by 2,100 workers at the Excalibur, also through a card check and neutrality agreement, when it opened the following year. In 1993, some 4,400 workers at the new Treasure Island and Luxor hotels joined the union's ranks through the same process. In just four years, the union increased its membership by 50% and, more importantly, unionized every new major hotel that opened in the city. Since then, Culinary's growth has continued at an equally impressive rate. From the opening of the Mirage until 2003 they gained 30,800 members for a total membership of 50,000. Moreover, union density in the casino industry in Las Vegas stands at approximately 65%, and density on the famous Las

Vegas Strip, the heart of the city's tourist-driven economy, is even higher at 90%. Local 226's string of organizing victories led AFL-CIO President John Sweeney in 1997 to declare Vegas to be the "hottest union city in America" during a visit to the city.[1]

The Culinary Union's systematic effort to organize new properties began in 1989, but the union was around for many years before then, and it is impossible to understand its success in recent years without an appreciation for the unique labor market conditions that set the stage for that success. In 1989, even before the union's expansion began, it already represented a large majority of the industry's workers in Las Vegas. This unusually high union density was the result of the desert town's labor shortage in the 1950s during the industry's first wave of growth; the scarcity of labor made it far easier for the union to organize. In the growth years since 1989, the industry has generally faced a tight labor market and periods of more pronounced labor shortages. Moreover, casino employers know that in this consumer-sensitive industry their bottom line is affected by the relationship between customer service and an experienced workforce with good morale. All these factors together mean that gaming companies are unusually dependent on a largely organized workforce for their success, a condition which accordingly gives the union more leverage. Underlying and reinforcing the advantage that density, a tight labor market and the importance of worker skill and morale give the union is the fundamental power of the strike weapon, the ability of the workers to withdraw their labor (or the credible threat to do so) and the effectiveness of such withdrawal. Culinary workers have shown that they have the organization and determination to indeed use this weapon.

Working in Culinary's favor is a second set of dynamics, this one having to do with the nature of the development of the gaming industry. "Expansion has been *the* corporate

[1] Quoted in Marc Cooper, "Labor Deals a New Hand," *The Nation* (March 24, 1997), 11-12.

strategy for the industry" in the last 15 years, explained Courtney Alexander, the research director for Local 226.[2] Casino companies have built new properties in Las Vegas at an astounding rate since 1989; many have also sought to expand outside of Las Vegas. This has given Culinary increased leverage in their relationship with the casinos on several levels. Most importantly, the union has demonstrated that it can thwart a company's expansion plans, costing the company millions in lost potential revenue. Furthermore, the aggressive expansion of the industry in the late 80s and early 90s led to a high level of reliance on debt financing, and in particular, on junk bonds. That left casinos unusually dependent on their operating cash flow, a dependence that furthered their vulnerability to economic action by the union.

Like SEIU 1199FL, HERE Local 226 also has a set of political relationships and processes that it can engage to increase its power vis-à-vis the gaming industry. "There's probably not a more highly political industry than ours," Culinary's political director, Glen Arnodo, said. "By its nature, it's a political industry, so every struggle we have, from contractual to organizing, is going to have a political manifestation in some way, shape or form."[3] From licensing to zoning, there are a myriad of regulatory issues, all of which go through one or more political bodies at the state, county and local level. The industry has long dominated Nevada's politics as well as its economy, and as a result has traditionally encountered no obstacles in regulatory and legislative processes. The Culinary Union, however, has very deliberately worked to increase its political capacity, influence and muscle so that it can intervene in these processes, giving it one more leverage hook in its relationships with employers. Outside of Nevada, meanwhile, the gaming industry has a less than wholesome image and significantly less political power, making it more vulnerable to

[2] Courtney Alexander, interview by author, Las Vegas, NV, October 28, 2002.

potential union interference. This has been most apparent in casino efforts to expand to new jurisdictions, where often Culinary's ties throughout the labor movement have given the union significant political clout even as the industry's influence is less dominant than it is back in Nevada. Similarly, HERE has a well-established presence in Washington, D.C., in particular Congressional ties, while the gaming industry until recently had almost no organized presence in the capitol. This gives the union an ability to help or hurt the industry on legislative issues that it has an interest in; and consequently, again, strengthens the union's hand in its dealings with employers.

Together these structural dynamics of Las Vegas's gaming industry have presented the Culinary Union with an unusual array of leverage points in their effort to further unionize the city's casino workers. They have taken advantage of every single one of these factors, strategically combining them in both organizing and bargaining campaigns— and as 1199FL does in Florida, they understand organizing, bargaining and political action all to be inextricably intertwined. Their organizing strategy has been to take advantage of these leverage points and build enough power to circumvent the NLRB election process and win union recognition through card check and neutrality agreements instead. Their starting point analytically is the same as SEIU's in Florida. D. Taylor, the secretary-treasurer of Local 226, explained Culinary's decision to pursue a card check strategy, "We saw that the National Labor Relations Board route... didn't work. It was in fact a tool for the boss, not a tool for the workers."[4] Monica Russo, 1199FL's president, similarly described the NLRB as "backwards. Even with a Democratic administration and real progressive people involved and even running it, it was still an anti-worker apparatus."[5] But whereas 1199FL's structural

[3] Glen Arnodo, interview by author, Las Vegas, NV, October 23, 2002.
[4] D. Taylor, interview by author, Las Vegas, NV, October 22, 2002.
[5] Monica Russo, interview by author, Miami, FL, May 28, 2002.

situation does not allow them to end run the labor board the way they would clearly like to, Culinary's structural position does.

The Culinary Union's success in establishing card check as the method of union recognition is so universal (there has been only one NLRB election at a casino, which is itself an illuminating story to which we will return) that card check is a community standard in Las Vegas. Most of the card check organizing gains are the result of a partnership model, where the union and company work together to realize goals that are important to both the workers and the company. Where casino operators have rejected partnership and refused to accept a card check process, the union has fought an all-out war on multiple fronts to bring them to their knees, and thus to the table, where the ultimate settlements have also resulted in card check agreements. The partnership model is the dominant one and the union's preferred model, but while the process of persuading employers looks different in the two approaches, the underlying tools of persuasion are the same. In both cases, the union combines the unusual advantages it has through the structure of the local labor market with the leverage opportunities it enjoys as a result of the corporate strategies and political dynamics of the industry. The constellation of relational interdependencies is dense enough that the union can use it to largely offset the disadvantages of the NLRB-mediated structures of labor law.

II. Data sources

My main primary data sources are extensive interviews with union leaders. I interviewed four of the top officials at Local 226: Secretary-Treasurer D. Taylor, Political Director Glen Arnodo, Research Director Courtney Alexander and Organizing Director

Kevin Kline. I also interviewed Jo Marie Agriesti, who was the lead organizer in the union's campaign at the MGM Grand (and now works for HERE in Chicago). Other primary sources include research reports and other union material, and extensive newspaper and other media accounts, as well as some newspaper ads. Because Las Vegas is a one-industry town and the union is an important player in the industry, the city's two daily papers, the *Las Vegas Review-Journal* and the *Las Vegas Sun*, provide a comprehensive (though not necessarily unbiased) account of all major union campaigns and developments. The *Sun* is considered the more liberal of the two dailies, while the *Review-Journal* can be counted on to take the employer's side in any labor-management dispute. (University of Nevada Las Vegas professor Hal Rothman referred to the paper as "the notoriously anti-labor *Review-Journal*, a newspaper so far to the right that it made the *Washington Times* look liberal."[6]) The *RJ's* (as it's known locally) anti-union bent was useful to me, as it provided a counter-voice to the obviously pro-union views of labor officials. In addition to the *Sun* and the *RJ*, other local media sources included the *Las Vegas Business Press* and the *Ralston Report*, a weekly opinion newsletter written by political commentator Jon Ralston. National news sources included the *Wall Street Journal* and the *Los Angeles Times*, occasionally others, and some of the trade publications, such as *Casino Journal*. But unlike the local sources, these were not comprehensive. For economic and industry data, I relied partially on newspaper and union sources, and partially on the Nevada Resort Association, the trade association, through its website, www.nevadaresorts.org.

Las Vegas is the subject of many books, and a number of these were useful secondary sources to me. These include Rothman's *Neon Metropolis*, a collection of essays and articles edited by Rothman and Mike Davis entitled *The Grit beneath the Glitter*, another

[6] Hal Rothman, *Neon Metropolis: How Las Vegas Started the Twenty-First Century* (New York:

collection edited by David Littejohn, *The Real Las Vegas*, and Sally Denton and Roger Morris's *The Money and the Power.*

III. History

"We date history here by 1984," said Arnodo when asked about the starting point of the Culinary Union's organizing program.[7] That was the year of the last citywide strike in the casino industry, a strike that was enormously costly to both the union and the employers. From Culinary's perspective, the outcome of the strike was a wake-up call, and the union's response set in motion a chain of developments that lead in 1989 to the breakthrough card check agreement with the Mirage.

But 1984 itself has a history, which is helpful in understanding the dynamics of both the labor market and the casino industry in Las Vegas. The Culinary Union was chartered by HERE in 1938 with a membership of between 500 and 1,000 workers. At the time, Las Vegas was still a small railroad town.[8] In 1946, the international sent a young business agent named Al Bramlett to help the new local, and Bramlett soon hit upon the union's key to success. As the industry expanded in the late 40s and 50s, it was desperate for workers. Located deep in the brutally barren Mohave Desert, Las Vegas is literally in the middle of nowhere, hundreds and hundreds of miles away from any significant population center (or anything else, for that matter). Bramlett became a labor recruiter, traveling throughout the country to entice thousands of people to come to Las Vegas and work in its casinos. The result was that "the union was viewed as an asset by the owners... because we could supply

---

Routledge, 2002), 84.
[7] Arnodo, interview.

the labor in a place where no labor existed."[9] Hotel operators accepted the union in exchange for the steady supply of labor Bramlett provided. The union even had a hiring hall, something otherwise unheard of in a right-to-work state. "The hotels needed the union as much as the union needed the hotels," Rothman summarized.[10]

In those days, the hotels were run by the mob. The union was run by Al Bramlett. There were no NLRB elections or other formal recognition processes that established the union in the casinos; rather, "some accommodation was made."[11] After all, it was the mob. Bramlett, for his part, was an autocrat, and there developed no tradition in Vegas of any kind of bottom-up or democratic trade unionism. Still, it is not uncommon to hear old-timers compare the days of the mob favorably to the era of corporate ownership that followed. The sentiment expressed is that, whatever else they were, the casino operators of that previous generation treated their workers 'like family'; by comparison, the corporate owners had a ruthless and callous focus on the bottom line.[12]

The takeover of Vegas's gaming industry by corporate players, led by Howard Hughes's Summa Corporation, signaled a shift in labor-management relations. The informal

---

[8] Culinary Workers' Union Local 226, http://www.culinaryunion226.org/english/pages/history.html (viewed May 8, 2002).
[9] Arnodo, interview.
[10] Rothman, 71.
[11] Arnodo, interview.
[12] Rothman reports, in a typical example, that a 1967 strike by Culinary members "was actually pleasant. Benny Binion, the hard-nosed Texas raconteur and gambler who opened the Horseshoe in 1951 and became a real power in the city, brought food to workers who struck his hotel. Italo Ghelfi, the owner of the Golden Gate, snuck cold drinks and smokes out to the strikers, hiding from his own security force"; Rothman, 73. Another example comes from an oral history collection, originally from *Inside the Glitter: Lives of Casino Workers*, by Kit Miller; quoted here from an excerpt reproduced in Hal Rothman and Mike Davis's *The Grit Beneath the Glitter: Tales from the Real Las Vegas* (Los Angeles: University of California Press, 2002). Cindy Trudell, a food server in the showroom at the Excalibur, said: "Family entertainment has ruined Las Vegas. These families are on a budget. They have three or four kids on their laps. When you ask if they want a cocktail, the first thing they ask is, 'How much?' and you want to kill them. It's lost the glamour. Now it's just baby strollers everywhere you go....When the mob was running Las Vegas, everyone made money. I could make $300 a night in tips. They were strictly interested in gambling. They comped the shows, the meals. Now people only get comped if management

and familiar partnership was replaced by a much harder-edged focus on profitability and, consequently, more strife between the union and the casinos. The union lost power. Al Bramlett, meanwhile, lost his life, as the mob's influence was diminished and their tactics shifted. In what is universally assumed to have been a mob hit, Bramlett was killed in 1977 after he refused to enroll the local in a mob-run dental plan. Bramlett left behind no strong organization or leadership, and thus his demise only accelerated the union's decline.

The 1984 strike is widely perceived to have been an effort by the emerging corporate players in the industry to break the union. While 18 mostly family-owned properties settled with the union in that year's contract negotiations, 13 casinos, represented by the Nevada Resort Association, pressed for labor concessions and provoked a strike. These mostly corporate companies wanted to change the practice of treating food, beverage and hotel departments as "loss leaders." These labor-intensive departments had always generated lower revenues than the gaming departments, but gambling profits more than compensated for this; and room and food prices in Vegas have always been kept artificially low in order to make the city an affordable vacation destination. The ensuing strike lasted 75 days and resulted in over 900 arrests of strikers as well as numerous violent incidents, including one striker being run over by the car of a strikebreaker; "I never thought, living in Las Vegas, that I would see anything that would approach what we saw in Selma, Ala.," then Culinary Secretary-Treasurer Jeff McColl said at the time.[13] In the end, both the union and the industry considered the strike very costly. The strike cost an estimated $60 million in lost

---

screws up and has to make good. It's gone down the drain. The corporations have ruined it. They want every room to make a profit"; Rothman and Davis, 218-219.

[13] Quoted in *Las Vegas Review-Journal*, April 5, 1984.

tourism revenue.[14] Moreover, it proved to be a public relations disaster, hurting the industry just at the moment when it was trying to improve its image.

For its part, the union lost six hotels to decertification efforts in the wake of the strike, and while it beat back the effort to break the union, the outcome was still largely perceived by members as a loss.[15] Moreover, it became clear to the union that the new wave of expansion in the industry that was beginning then would result in the deunionization of the industry and ultimately the demise of the union unless it found a way to organize new properties. Thus the painful strike in 1984 laid the groundwork for a rebuilding and revitalization process within the union that bore its first fruit with the 1989 card check agreement with the Mirage. In 1987, Culinary members elected new leadership, and the international union sent in a team of organizers to help the local. "When we came back here," said D. Taylor, who was one of the organizers sent to Vegas in 1987,

> this union was run more like a business union. The union was this building with, they called them business agents, some elected officials. We decided to make it a rank-and-file union. An extensive shop steward system. An extensive committee system. Rank-and-file negotiating committees. Rank-and-file involvement in education... and we did a real education process about the non-union problem and what it meant. You know, we also had the advantage of having this gigantic new casino being built on the Strip, the Mirage. Nothing like a visual to get your point across.[16]

As the new Mirage resort was being built on the Strip and the 1989 bargaining round loomed ahead, finding a way to organize the Mirage became the union's number one priority. "We knew that if we did not get the Mirage then we would not get the many that were to follow. And the union would go out of existence," remembered Arnodo.[17]

---

[14] *Las Vegas Review-Journal*, March 26, 1989.
[15] Arnodo, interview. The 1984 strike was considered an economic strike by the NLRB, and under the law employers are allowed to permanently replace workers in an economic strike. That paves the way for a decertification vote, which can be held one year later, and from which the permanently replaced union members are barred.
[16] Taylor, interview.

IV. Corporate expansion: "We told *everybody*"

Ironically, while the expansion of the gaming industry that began in the late 80s threatened the union's existence, that expansion itself would provide the union with crucial leverage points that enabled it to not only survive, but thrive.

In a series analyzing the 1989 bargaining round and Local 226's success in winning bargaining-to-organize language in the resulting contracts, the *Las Vegas Review-Journal* noted "resort owners feared a recurrence this year of the crippling 1984 strike."[18] The *RJ* specifically cited owners' fears of picket lines in front of the new properties they were building and opening. One reason the expanding casino companies wanted to avoid scenes of labor unrest was public relations. Arnodo explained,

> I think the industry was at a particular juncture as we were about to head into the new era of mega-resorts, where serious labor trouble would have been extremely bad for the industry. Especially coming on the heels of '84. I think that was sobering... .There were still images of the '84 strike fresh in everybody's mind, when Las Vegas made the national news and thousands of people got arrested and tear gas was in the streets. That was not the image Las Vegas needed as we headed into 1989 and the era of the mega-resort.[19]

The mega-resorts, the first of which was the Mirage and which now dominate the Strip, are elaborate entertainment attractions that offer far more than the traditional games. Most are oriented around a theme and include significant non-gaming attractions.[20] Las Vegas hotels have become Disney-esque theme parks, now marketed as family entertainment. Mom and dad can gamble while the kids can watch a pirate battle (complete with a sinking ship) in

---

[17] Arnodo, interview.
[18] *Las Vegas Review-Journal*, November 6, 1989.
[19] Arnodo, interview.
[20] The Excalibur, complete with turrets and drawbridge, is themed around King Arthur's court. Treasure Island is built around a pirate theme, while the MGM is based on the Wizard of Oz. New York, New York includes scaled down versions of many of that city's most famous landmarks, from the Statue of Liberty to the Empire State Building and the Brooklyn Bridge. At the Paris

front of Treasure Island. The Excalibur has a moat with a dragon. And the Mirage has Siegfried and Roy's now legendary magic show. It was the industry's desire to project this wholesome image, which was just being crafted in 1989, that made the casinos particularly reluctant to invite a dispute with Culinary.

The construction of the new mega-resorts made the industry vulnerable to union action not just for public relations reasons, but more fundamentally, for financial reasons. The corporate expansion of the late 80s was financed largely by debt, and in particular by junk bonds. "Virtually every hotel and casino on the Strip is financing an expansion project," noted the *Review Journal* in its series on the 1989 union settlement.[21] Steve Wynn, for instance, borrowed $623 million in junk bonds in 1988 to build the Mirage.[22] "Generally," Alexander wrote in an article on the union's recent history,

> the corporate casinos were highly leveraged... and as a result, they were dependent on uninterrupted cash flows to service their debt. Even national hotel companies like Holiday Corporation and Hilton Hotels produced as much as 40 percent of the cash available to meet debt obligations from their casinos. Against this backdrop, the corporate industry had to think hard about provoking another large-scale labor brawl.[23]

Think hard they did, and in the end, their financial liability— in combination with other factors, discussed below— led them to choose a cooperative relationship with the Culinary Union.

Thus began an era of prosperity and labor-management partnership in Las Vegas. Steve Wynn's Golden Nugget, Inc., which owned the Golden Nugget downtown and was building the Mirage, was the first company to settle with the union in 1989. Wynn,

---

Hotel, meanwhile, guests are greeted by staff members with the words *"Bonjour, Madame"* or *"Bonjour, Monsieur"* (even at night), and of course, a replica of the Eiffel Tower.

[21] *Las Vegas Review-Journal*, November 7, 1989.

[22] Courtney Alexander, "Rise to Power: The Recent History of the Culinary Union in Las Vegas," in Hal Rothman and Mike Davis, eds., *The Grit beneath the Glitter: Tales from the Real Las Vegas* (Los Angeles: University of California Press, 2002), 152.

[23] Ibid., 153.

universally considered the architect of the modern Las Vegas, called the contract "revolutionary."[24] Workers at the Golden Nugget approved the deal by a vote of 762 to 3.[25] In exchange for work-rule changes and an agreement from the union that it would not take economic action against the company's new casinos, the company agreed not to oppose unionization in those new casinos and to recognize the union based on a majority of signed authorization cards. Neutrality and card check are the heart of this "organizing language" in the Golden Nugget contract and that language became the template from which other contracts were negotiated in the 1989 round of bargaining. The "Big Six," an informal grouping of some of the city's biggest corporate gaming establishments, were the next to settle, and a majority of the city's casinos followed. In union jargon, the organizing language that Culinary won in 1989 is usually referred to as a "trigger agreement"; the purchase or construction of a new property by an employer triggers the contract provision that specifies the conditions under which union recognition can be established at the new facility. In the years following the 1989 contract, as Vegas's building boom unfolded, the vast majority of the new casinos constructed became union properties under the trigger agreements won in 1989. The industry flourished, the union's ranks grew, and living and working standards continued to improve for casino employees. "The companies that have dealt with us, that we were... able to negotiate agreements, card check agreements, with, that part of the industry recognized that there was value in having workers as partners in that expansion process," said Alexander. The gaming industry's "most profitable years have been the years of that partnership in Las Vegas."[26]

---

[24] Quoted in *Las Vegas Review-Journal*, May 6, 1989.
[25] *Las Vegas Review-Journal*, May 6, 1989.
[26] Alexander, interview.

Of course, this does not mean that there is now universal harmony in Sin City labor relations. "There are always companies that think they can, that they're going to ultimately undo the Culinary Union," noted Alexander.[27] One of those companies was MGM Grand, Inc., which opened what was then the world's largest hotel, the MGM Grand, on the Las Vegas Strip in 1993. By the time the MGM opened, non-union, in December of that year, the union and the company had already been locked in a high-profile battle for over a year. That the MGM would not accept the partnership model of Las Vegas labor relations was clear the moment Kirk Kerkorian, who had a controlling 73% interest in the MGM, hired Robert Maxey as its president and CEO. Maxey, who was known as a specialist in opening casinos, had a history of antagonism to the union.[28] Local political observer Jon Ralston, in fact, said that Maxey was "a man on a crusade, a jihad against the union" at the MGM.[29]

Union officials are in unanimous agreement that what brought Maxey down and won a card check agreement at the MGM was "everything." Asked how and why they won that struggle, Alexander started with, "there's a *lot* of answers to that."[30] Culinary waged a multi-faceted campaign over several years, drawing in or reaching out to everyone from investors to lenders to travel agents, local Culinary members, politicians, and even Barbra Streisand.[31] In the end, the company lost money under Maxey's leadership, in part because of the union's campaign and in part because of his own ideological obsession with defeating the union—indeed, the union used Maxey's fanatical anti-unionism as a prominent piece of its argument

---

[27] Ibid.
[28] Maxey had been the head of the Elsinore Corporation, which operated the Four Queens, one of the hotels that resisted the 1984 strike settlement and went on to decertify the union.
[29] *Ralston Report*, December 3, 1993.
[30] Alexander, interview.
[31] The diva was scheduled to give two performances at the MGM Grand on New Year's Eve 1993. The union appealed to Streisand to cancel the shows in solidarity with the city's union workforce and union tradition, got various union conventions to pass resolutions asking Streisand not to perform, and even got 11 Congresswomen to send a letter to her. In the end, despite her reputation as a liberal, Barbra Streisand performed as scheduled.

to investors and others as to why MGM's business plan was not sound. On several levels, then, MGM's dispute with the union cost the company money. Among the circumstances that made the union's opposition effective and costly there were, as in 1989, economic factors having to do with the financing and expansion of the industry.

Painting Maxey as a financial liability for the company was part of the union's strategy:

> It was part of our publicity effort to demonstrate that his leadership of that company came with costs. One, that he would spend more money in the company trying to fight unionization and would make bad decisions in that regard. And two, that he didn't have what it took to operate a leading gaming company... .So we told everybody that, we told *everybody*. Everybody who would listen to us we told.[32]

The union's message about Maxey's record was effective in part because it was not just about his anti-union record and his willingness to sacrifice profits to ideology; it was also about his *operating* record. The union produced literature that prominently highlighted operating losses in the millions at three separate casinos which Maxey had previously headed.

Culinary's research was credible because it offered substantive and detailed analysis of MGM's planned financing, marketing and other business plans. While the union argued that Maxey would make bad business decisions at the MGM because of his determination to keep the union out, they also argued that the MGM's marketing strategy was flawed. Maxey aimed to attract five distinct markets at the MGM (locals, tour and travel families, highrollers, conventioneers and independent travelers); Culinary documented both the failure of that strategy at the Rio under Maxey's management and the success of focused marketing strategies which were becoming the main trend in the industry. Culinary research further analyzed the company's financing plan and noted that while other companies were

---

[32] Alexander, interview.

backing away from the risky highly-leveraged financing that characterized the industry in the late 80s and early 90s, MGM was moving in the opposite direction with its financing plan. Moreover, the union argued that such a highly-leveraged plan was especially risky for the MGM because it did not have other established properties to support its cash flow. These and other criticisms of the MGM Grand's business plan were laid out in a report the union released in 1992, entitled *Would you bet a billion dollars on a single roll of the dice? An advisory on the MGM Grand Hotel & Theme Park.* The report was circulated among stockholders, potential investors, lenders— "everybody who would listen."

The union also intervened in the MGM's efforts to expand. "Their ability to expand outside of Nevada was completely hampered by us," said Taylor.[33] At the time, rustbelt jurisdictions throughout the Midwest were legalizing gambling, and every leading gaming company was trying to break into new markets. The union used its institutional relationships with central labor councils, state federations and other union bodies to help mount opposition to MGM expansion in these states. Many of these places were cities with strong labor communities (for instance, Detroit, MI, Gary, IN, Chicago, IL) where Maxey's anti-union record did not play well. In response, Maxey redirected the MGM's expansion plans internationally. The MGM bought a casino in Australia, which it later sold again, and tried to expand into China. But again, the union was there to dog them every step of the way. Culinary produced a lengthy report for investors on the company's Asian market plan, again offering detailed analysis of how its strategy was flawed. The union even sent a researcher to China at one point. In the end, the China expansion plan fizzled. "Ultimately, their expansion plan was faulty, and they were unable to expand out of being one casino in Las Vegas," said Alexander,

---

[33] Taylor, interview.

> They were unable to get outside of Las Vegas in any significant way.... I think, had they not been fighting the union, they would have been in earlier, they would have been contenders in a Chicago market, for example, which is the most coveted market in the country... .They would have been players in that. But... our ability to take this dispute and more broadly draw the picture of it for constituencies who wouldn't want that kind of conflict in Chicago or the Midwest forced the company to change its direction. Had it not been for our fight, their expansion plan would have looked very different, because they would have been able to realistically go into markets that the rest of the gaming companies are now in. MGM is now in Detroit. But that move came after Maxey left. So I think it was very much a plan that was tailored around us, because they knew with our ability to publicize [Maxey's record] they weren't going to make it in the Midwest. And so, as opposed to trying and failing, they decided they were going to do this international effort; and that failed as well. We'd investigated it enough to know it was leading investors in the wrong direction... .And ultimately... the way they had to design their expansion plan was the admission that this fight with them was costing them opportunities.[34]

In the end, the union's ability to block the MGM Grand's expansion was one of the ways that Maxey's jihad cost the company money. The company's first quarter earnings in 1995 were flat; in the second quarter it lost $6.6 million; and shortly thereafter a Smith Barney analyst described the MGM as "the worst performing of the new mega-resorts."[35] "To be a public leading gaming company and lose money was unacceptable," noted Alexander.[36] And so, under mounting pressure to resolve the labor dispute and refocus the company's operations, Maxey resigned in June of 1995. J. Terrance Lanni, a former CEO of the unionized Caesar's Palace, became the new chairman and within months the MGM and Culinary had negotiated a card check agreement that ended the labor war. "The reason for the MGM's change of heart," reported the *Review Journal* in July when rumors of an agreement were already thick, was "[t]he company controlled by billionaire Kirk Kerkorian wants to expand, and the unions are in a position to generate negative feelings and publicity

---

[34] Alexander, interview.
[35] *Las Vegas Sun*, April 7, 1995; *Las Vegas Review-Journal*, July 21, 1995; *Las Vegas Sun*, August 1, 1995.
[36] Alexander, interview.

in other jurisdictions, the businessman said."[37] The company returned to profitability in 1996.[38]

Having made a strategic decision to refuse to agree to NLRB elections and to insist instead on card check agreements, the Culinary Union had no legal means to compel employers to recognize the union. As noted elsewhere, NLRB elections are the only route to unionization that employers can be bound by without their voluntary agreement. In the relationship between the casinos and their workers, the union could wrest such voluntary agreement from employers because it could effectively bring in other third parties into the relationship. The particular constellation of actors meant that Culinary neither needed the NLRB's election process to organize nor had to expose itself to the many pitfalls of that process that bias the outcome in employers' favor. The interdependencies of Vegas's gaming companies and the investors, lenders and shareholders they needed to realize their expansion plans presented substantial opportunities for the union to build power in its relationships with the companies. The union's ability to leverage the relationships between the casinos and these various financial actors, potent in itself, was even more effective in combination with its capacity to turn the characteristics of the local labor market into additional leverage sources.

V. Labor market leverage: "We had the critical mass"

Junk bond financing and a desire for a more Disney-like reputation made the gaming industry vulnerable to economic action in 1989, but by themselves these factors would have meant little if the casinos had not genuinely "feared a recurrence this year of the crippling

[37] *Las Vegas Review-Journal*, July 21, 1995.

1984 strike," as the *Review-Journal* put it.[39] That fear rested, first of all, on the belief by the owners that the union was willing to strike. The union's internal rebuilding and revitalization effort that began in 1987 certainly lent credibility to that belief; in 1989 the union was mobilizing its members like it had never done before. Ironically, union officials admit, "we weren't in a position to strike. We certainly would have attempted to make it look like we were, but I don't think we realistically could have pulled off a successful strike; '84 was too fresh still on the minds of the members."[40] Luckily for the union, it was fresh on the minds of the employers as well.

Behind a set of bad memories, there were several factors that would have made a strike in 1989 particularly effective (putting aside the union's doubts about its own ranks). Critical among these was that Las Vegas was once again facing a labor shortage. This meant not just that the casinos would not have a "reserve army of the unemployed" to call on as strikebreakers. It meant that there was a premium on finding and keeping the skilled workers who were essential for the industry's success. "Employee morale, customer service are very tightly woven," noted Alexander, "and that was recognized by no company more than Mirage Resorts, which led this effort to negotiate card check neutrality agreements with us."[41] Similarly, Taylor argued,

> They wanted workers who actually knew this industry, who actually knew how to service customers, who knew how to clean beds, who knew how to serve a drink in the kind of volume that's demanded. So they were incentivized also to have a continuation of, let's say, our health and welfare, our pension plan, and the security of a union contract. So it was a combination of the priority the worker put on it [card check neutrality] and also the understanding the companies put on what needed to be delivered in this town, the kind of product that should be delivered.[42]

---

[38] Alexander, 172.
[39] *Las Vegas Review-Journal*, November 6, 1989.
[40] Arnodo, interview.
[41] Alexander, interview.
[42] Taylor, interview.

Because they needed workers' skills in a tight labor market, employers were "incentivized" to keep their workers happy, and in 1989 that meant conceding their demand for card check as well as taking care of the bread and butter issues of benefits and job security.

Rothman makes the case that the city's labor shortage played a significant role in the 1989 settlement in more dramatic terms:

> In a bizarre reprise of Al Bramlet's [*sic*] original circumstances, the demand for labor far outstripped supply and the highly leveraged megaresorts needed a dependable source... .For the beleaguered union, the lack of labor was a gift. Instantly, the union again became a human resources department, recruiting workers and delivering them to owners like [Circus Circus CEO William] Bennett and Wynn... .No other entity could supply the labor necessary to supply the new hotels, much less maintain any semblance of quality control. Once again, the Culinary Union attained importance, this time as a partner in the new corporate Las Vegas.[43]

While union officials do not make as bold a claim for the role that the labor shortage played in 1989, they consider it one of several critical factors.

The existing union density on the Las Vegas Strip also played an important role in the 1989 settlement. The union's potential to disrupt the industry and adversely affect its bottom line is far greater with the majority of the hotels unionized than it would be with only a handful of union establishments. A citywide strike would attract national media attention in a way that a strike at a few casinos would not; a citywide strike would mean a decline in visitors and thus revenue for the entire industry, whereas a more limited strike would induce far fewer people from canceling a trip to Vegas.

Apart from the effect of the city's unusually high density on the union's leverage over the employers in 1989, union density has played a crucial role in Culinary's organizing success because the main *vehicle* for establishing card check neutrality has been collective bargaining agreements. It is the organizing language of the union's contracts that has enabled union recognition at new properties without employer interference and without prolonged

battles— and, thus far, without any losses. Most of the new resorts that have been built since 1989 were built by operators with existing Las Vegas properties and most, therefore, were covered by the union's organizing language. Among the bigger new properties that went union through trigger agreement card checks were: the Mirage (1989, 3,300 workers), the Excalibur (1990, 2,100 workers), Treasure Island (1993, 2,200 workers), the Luxor (1993, 2,200 workers), the Monte Carlo (1996, 1,650 workers), the Bellagio (1998, 4,150 workers), Mandalay Bay (1999, 2,800 workers), and the Paris (1999, 2,800 workers). Union density meant Culinary had contracts with almost all the major casinos on the Strip going *into* the mega-resort era, and therefore the organizing language it won in 1989 contract had an enormous reach, covering the vast majority of new properties that have been built on the Strip since then.

The best case for the bargaining-to-organize strategy, in fact, is Las Vegas. (For more on this strategy overall, see chapter 2.) Bargaining to organize is a strategy that only makes sense under conditions of expansion, but where those conditions hold, as in Vegas's gaming industry, it provides a considerable advantage to unions trying to organize. It essentially moves the battle site for union recognition from a relationship between unorganized, unprotected workers with no contract and their employer to a relationship between organized workers with a contract and their employer. Obviously, workers in the latter relationship are in a far less precarious situation and have more power vis-à-vis the employer.

The MGM Grand was one of the few hotels that have opened on the Las Vegas Strip since 1989 where the union did not have an existing contract that extended a card check agreement to cover it. Culinary nonetheless chose to fight for card check at the MGM rather than contend with the NLRB election process. In addition to the union's successful

---

[43] Rothman, 79.

intervention in the MGM's expansion efforts, noted above, the high union density in Vegas also made a positive difference for Culinary in several ways. In a largely unionized labor market, the MGM had to provide or exceed union-scale wages and benefits to attract and keep workers, which meant that operating non-union was actually more expensive than operating union. And Culinary members throughout the city were mobilized in opposition to the MGM's anti-union crusade; they were a significant force in that battle because their numbers were large and they represented the bulk of the industry's workforce.

This account has so far focused on outside leverage factors that have been critical in persuading (as in 1989) or pressuring (as in the MGM) employers to agree to card check agreements. Of course, while a card check and neutrality agreement greatly reduces the unfair employer interference in workers' rights to organize and the legal/procedural obstacles that prevent workers from acting on their desire for a union, it does not (and should not!) eliminate the underlying, fundamental process through which the workers themselves must build a collective project and majority support in order to bring the union to their worksite. In Las Vegas, where union consciousness runs both deep and broad because of the city's history and the union's success, support for the union at a new casino that has agreed to card check and neutrality comes very quickly. The union begins signing workers up during the hiring process. Generally Culinary members who work at a different casino owned by the same company station themselves on a nearby public sidewalk to where the final interviews take place and recruit workers as they come out. "Because the company is neutral," said Kevin Kline, the Local 226 organizing director, "it is not difficult at all to have people sign for the union. It's the attacks on workers that keeps them from joining in mass numbers." But where there is no employer opposition, the union has signed up a

majority by the time the hiring is done. "That's happened at every single one of the properties," emphasized Kline.[44]

Because majority support for the union is always a necessary (if not sufficient) condition for unionizing a facility, and because so much of Las Vegas's workforce is almost reflexively pro-union, the MGM made building an anti-union workforce the centerpiece of its anti-union campaign. Like the Culinary Union, MGM management began its campaign well before the casino ever opened. "I've never seen such a good anti-union campaign put together," said Jo Marie Agriesti, an assessment all the more remarkable because it came from a veteran union organizer who had seen her share of anti-union campaigns.[45] Agriesti, in fact, was brought by the union to Las Vegas to lead the organizing effort at the MGM.

The MGM's anti-union campaign began with its hiring strategy. The company screened 100,000 applicants for 8,000 initial jobs at the casino; it was the largest number ever to apply for jobs at a single establishment in Las Vegas. "I know what they did," said Agriesti,

> they went through their application and they looked at their previous employment and what their rate of pay was and whether they were paying for health insurance, whether they had health insurance, and if they were making $6 an hour or less, and/or they didn't have health insurance, they got hired. Isn't that a brilliant way to fight the union? They were so loyal; they thought everything they got in life [came from the company].[46]

Moreover, the MGM made a special effort to recruit labor from outside Las Vegas, in particular from Los Angeles and Arizona. The *Los Angeles Times* reported that there were almost as many Californians as Nevadans among the hopeful applicants waiting in line at the MGM's "casting center" (taking the theme-based approach of Vegas casinos to new

---

[44] Kevin Kline, interview by author, by phone, August 14, 2003.
[45] Jo Marie Agriesti, interview by author, Las Vegas, NV, October 24, 2002.
[46] Ibid.

extremes, the MGM referred to employees as "cast members").[47] Hiring from within Vegas would have meant hiring proportionately more people with union experience— and consciousness— as well as higher wages and (better) benefits. By seeking out welfare recipients, workers classified as disadvantaged and out-of-towners, the MGM assembled a "cast" with few community ties, little experience with labor and generally more desperate backgrounds, which they were grateful to escape. "The MGM has made a bigger commitment to low-income families than any other casino in the past," Michael Wilden, deputy state welfare administrator, told the *Las Vegas Sun* in early 1994; the *Sun* reported that the hotel had committed 1,200 positions to low-income workers.[48] It also reported, separately, on the MGM's hiring of welfare recipients.[49] The resulting workforce at the MGM was "totally different" than it was at other major Strip resorts.[50]

Moreover, the initial hiring process was accompanied by a huge fanfare and almost endless good press highlighting the opportunities offered by the new casino. The "casting center" featured balloons, entertainment from Wizard of Oz characters, music, ice cream and a video combining classic *Wizard of Oz* footage and superimposed messages about company policies (including an opinion by the Tin Man that "cast members" didn't need "outsiders" speaking for them— a classic anti-union pitch).[51] Local papers reported that wages would "rival[...] those at other Strip resorts."[52] But the biggest hype was reserved for the MGM's benefits program. The MGM ran a series of ads in the city's two dailies promoting their benefit programs in the month before their "casting center" opened, and then newspaper articles provided even more visibility for the company's claim to be

---

[47] *Los Angeles Times*, September 13, 1993.
[48] *Las Vegas Sun*, January 18, 1994.
[49] *Las Vegas Sun*, January 20, 1994.
[50] Agriesti, interview.
[51] *Las Vegas Sun*, August 3, 1993; *Las Vegas Sun*, August 4, 1993.
[52] *Las Vegas Sun*, August 4, 1993.

providing the best benefits package in town. The ads promoted the MGM's on-site health clinic, its "University of Oz," which provided everything from job training to ESL to personal money management, and its 401k plan. Similarly, once the casino opened, MGM heavily promoted its benefits to the workers. "They did a tremendous job of plugging their programs... .They had a lot of meetings; didn't spend a lot of time on the union, they would give one line on the union or something, but they would spend a tremendous amount of time on how great they were."[53]

The MGM did, in fact, offer union-scale or even higher wages and comparable health benefits, and in some cases better health benefits. As a result, it was "tough going" for union organizers as they first approached jobs applicants and later MGM employees; that, of course, was the intended effect of the wage and benefits package. "It wasn't as if you had the traditional appeal, 'join the union, improve your wages.' Most of their wages were higher than union scale, in an effort to keep the union out," recalled Arnodo.[54]

To make things even tougher for organizers, said Agriesti, MGM management ran the hotel "like a country club." Discipline was lax, people sometimes clocked in and then left again, workers were allowed to take vacations whenever they wanted. It was all part of an effort to continue to make workers think that company was a benevolent provider and that they didn't need a union. "There's stories in there I've heard," Agriesti recounted,

> like if somebody couldn't do a job, they would just find another person to do it. They'd hire somebody else to be right along with them, so no one would get pissed off at them. Bob Maxey's whole life was keeping the union out. And there's a story about a guy, a guy who was absolutely drunk on the job, and one of their security officers told me he was drunk on the job. They took him over to their MGM clinic, and they were called, like, "don't fire him, whatever you do, don't fire him." And the guy, the guy went outside, pissed on the lawn, and wouldn't even take his drug test, because he went outside, and they were like, "whatever you do, don't fire him! don't fire him!" They wouldn't fire anybody.

---

[53] Agriesti, interview.
[54] Arnodo, interview.

Furthermore, the company let workers enroll family members and boyfriends or girlfriends in the company's health plan. "Anybody could go to them with any problem. I could come and say, 'you know, my mother has a hangnail,' and they'd send someone over to fix it. They had mothers on the health insurance."[55]

Needless to say, running a casino "like a country club" was expensive, and this is another way in which Maxey's anti-union jihad cost the company money. Under different labor market conditions— with a slack market instead of an incredibly tight one where companies were competing to attract employees; in a market where the wage and benefit standards were set by the non-union sector instead of the union sector— fighting the union would not have been so enormously costly.[56] As it was, under the circumstances, "unionization could be a money-saving alternative," as one newspaper analysis put it.[57] How often does that happen?! It's clear from all accounts that incoming CEO Terry Lanni negotiated a card check agreement because he felt it was a business necessity. "Sources said Lanni believes the pro-union stance will help the company's efforts to develop casinos outside Nevada and cut labor costs."[58] In the end, the partnership model of labor relations in Las Vegas was vindicated, the union was strengthened, and Maxey was discredited. "MGM shakeup, streamlining a stunning rebuke to Maxey," one headline said.[59]

And yet, Maxey almost had the last laugh, because his anti-union strategy of building a union-resistance workforce nearly prevailed. By the time the union had negotiated the card

---

[55] Agriesti, interview.
[56] In terms of the tightness of the labor market, the *Las Vegas Sun* ran a feature on the industry's labor shortage shortly after the MGM's "casting center" opened. Noting that the MGM was one of three new hotels (Treasure Island and the Luxor were the others), the article told stories of personnel executives who would recruit workers literally on the premises of competitors' casinos. "The competition for workers has stiffened with the planned opening of three mega-resorts within two months this fall"; August 6, 1993.
[57] *Las Vegas Sun*, August 2, 1995.
[58] *Las Vegas Sun*, July 29, 1995.
[59] *Las Vegas Sun*, August 3, 1995.

check agreement, and with it, access for organizers to the hotel, workers there, selected in the first place for their likelihood of being union-resistant, had additionally been subjected to the company's anti-union campaign for two years. Thus organizers faced an extremely challenging task in building a majority at the MGM that they did not ordinarily face when they had card check and neutrality agreements. "The first day we went in there and we had access," recalled Agriesti,

> the whole committee met us in the cafeteria, put on their committee buttons— because it was an underground committee— they put on their committee buttons and all hell broke loose... .The guy from the bell department went in and started talking to his guys; they ripped the button right off his shirt, told him to get the f away from them, whatever, and I remember him coming down here, and he was almost crying... and he says, "I'm quitting, I got to quit." And I remember Charlene, one of the organizers, was going, "you can't quit, you can't quit the committee," and he goes, "oh no, not the committee, I'm going to quit the whole job!" You know, because it was so, so bad. So we got recognition with like 51%. I mean we scraped every friggin' card.

In addition to the hostile workers Maxey had hired and groomed to oppose the union, there were many anti-union managers who remained on the job even after the change in top management. While the word from above was neutrality, organizers were certain that lower-level managers continued traditional anti-union tactics. "Even though you got rid of Maxey, you still had all these anti-union managers who were on his program," said Agriesti.[60]

In the end, the Culinary Union did succeed in building a majority at the MGM. They worked methodically; organizers talking to committee members, committee members talking to workers, going over status reports every week, doing house visits. "We must have done a thousand house visits," Agriesti related with a sigh that indicated that the very memory of the MGM campaign was still exhausting. Besides the sheer dogged determination of organizers and rank-and-file leaders, the union's cause inside the casino was helped in the wake of layoffs that Lanni ordered as part of his effort to bring the hotel back to

profitability; and similarly, by a tightening of discipline to more normal standards. That made people begin to feel like maybe they needed a union after all. In addition— and here once again, the city's high union density was a factor— as people settled more permanently in Las Vegas, "their relatives came to town, and they didn't work at the MGM. They worked at the Mirage; they worked at the Treasure Island; they worked at other places and they... began to see that there's good things about the union. It's about being in town, being in Las Vegas for a while."[61]

Las Vegas's union density had still further consequences for the MGM battle. Like the Mirage in 1989, the MGM in 1993 loomed as a bellwether for the next wave of development in Las Vegas. Union leaders, and members as well, believed that if the MGM prevailed in its insistence on operating non-union the union's future would be much tougher. Union leaflets handed out in front of the "casting center" painted a stark picture: as reported by the *Sun*,

> "Our contracts everywhere else are in jeopardy," the union handout states. "Unless the MGM Grand is stopped, we will lose health and welfare, pension, wages, grievance procedures... just like workers across America who allowed their unions to die one company at a time."[62]

The issue was brought into even sharper focus in 1994 when Culinary contracts on the Strip were up for renewal. Across the board, union casinos proposed three-year agreements, instead of the standard five-year deals, in the face of uncertainty about the outcome of the battle between the MGM and the union.[63] For both the union and the employers, the 1994 contract and the MGM's status were clearly linked. Culinary members, meanwhile, reflected the same understanding, asserting in a union poll that "the No. 1 threat to the Culinary's

---

[60] Agriesti, interview.
[61] Ibid.
[62] *Las Vegas Sun*, August 4, 1993.
[63] Alexander, 169.

longevity is organizing the MGM."[64] Their concern over the issue had already been on display at the mega-resort's opening in December 1993; some 5,000 union members were on hand protesting on an informational picket line. In May 1994, another 5,000 members demonstrated in front of the MGM, this time in defense of the Constitution as well as the union standard in Las Vegas. The hotel had claimed ownership of the sidewalk in front of the casino, threatening to have anyone engaging in union activity there arrested. And so union members lined up to be deliberately arrested in an incredible show of defiance. Some 500 were arrested that evening. Taylor said the union "could have had 5,000. The cops told us after 500, no more."[65] The determined opposition of a large part of the industry's workforce was one more source of pressure on the MGM, and worked to broaden the conflict well beyond the casino's doors. "We demonstrated that our members in this town were not going to let a leading casino and a leading casino company open a non-union casino and operate with immunity as a non-union operator," Alexander emphasized.[66]

For anyone who might have had any doubts, the depth of Culinary workers' determination to fight for their union was on display 24/7 less than two miles up the road in front of the Frontier Hotel. Over 500 workers struck the Frontier on September 21, 1991, in response to the casino's illegal implementation of its contract proposal and other unfair labor practices. They were still on strike when the MGM opened, and they continued to be on strike throughout the MGM battle. Indeed, when the strike ended— victoriously, for the union— in 1997, it was the longest strike in U.S. history. Moreover, *not a single worker ever crossed the picket line.*[67] It is hard to imagine a more convincing illustration of the union's resolve, and Culinary pointed to the Frontier dispute again and again during its battle with

[64] *Ralston Report*, January 14, 1994.
[65] Taylor, interview.
[66] Alexander, interview.

Maxey's MGM. In its 1992 advisory publication, for instance, it ran a picture of the Frontier with hundreds of strikers in front of it, and intoned, "It has been demonstrated recently that casinos which choose labor strife over cooperation encounter operational difficulties." The report goes on to note an estimated 40% decline in revenue at the Frontier and adds, "There is no end in sight for the Frontier strike."[68] The cautionary tale concludes: "The confluence of poor management and labor conflict have proven devastating for the Frontier. Potential investors should consider the possibility of similar problems with MGM's project."[69]

The high union density on the Las Vegas Strip that was Al Bramlett's legacy to the union affected the balance of power between workers and employers in numerous ways. "We had the critical mass; it was a one-industry town that is largely organized, which, as we know, is a rarity," Arnodo commented.[70] Collective bargaining contracts meant workers had more protection than non-union workers, and so the union shifted the contest over unionization into the bargaining arena as much as it could. But the extensive reach of the union in an organized market also meant that the industry's workforce was organized (in the literal sense of the word), mobilized and capable of disrupting business as usual. Moreover, under conditions of labor shortage, which obtained at several crucial moments, workers gained even more power as employers had fewer alternatives for getting the skilled labor they needed. Maxey tried to neutralize this advantage by deliberately generating a huge pool of job applicants for far fewer jobs, but in the end he could only keep workers— and keep them non-union— by matching the industry's prevailing union wage and benefits, which

---

[67] Alexander, 160.

[68] It also notes that some of the revenue decline "may be attributable to a soft economy." I draw the reader's attention to this detail by way of remarking how meticulous Culinary research reports are. Without hiding the union's organizing agenda, they concentrate on accurate financial analyses rather than mere rhetoric; their effectiveness stems in large measure from their reliability.

[69] Research Department, Culinary Workers Union, Local 226 HERE, *Would you bet a billion dollars on a single roll of the dice? An advisory on the MGM Grand Hotel & Theme Park*, 1992.

ultimately proved too costly. These local labor market characteristics, combined with the leverage opportunities presented by the industry's expansion, have enabled the union thus far to win every effort it has made for card check agreements. In addition to all these factors, the union and the employers are enmeshed in a network of political relationships that have given Culinary further leverage over the industry.

VI. Political action: "Demonstrating what the union can do"

Separating out the different kinds of leverage that the Culinary Union has used to help it organize— opportunities stemming from the industry's expansion, labor market characteristics and political factors— is, of course, a somewhat artificial exercise. I have organized the story in this way in order to highlight the relational structures that underlie Culinary's capacity to organize, but it is ultimately the combination of various pressure points that has given the union the power to bring industry employers to the table on their terms. Moreover, even single factors sometimes have multiple components that cross the analytical lines laid out here; for instance, blocking expansion efforts in jurisdictions outside Nevada inevitably involves political actors as much as financial ones. Nowhere is the interconnectedness of the relationships that underlie the union's strength more apparent than in the political arena. And as in 1199FL's case, there is a striking juxtaposition between, on the one hand, a series of state structures and actors that *impede* organizing (i.e., the NLRB and the apparatus of labor law) and, on the other hand, a series of state structures and actors that provide an alternate set of interdependencies that *facilitate* organizing.

---

[70] Arnodo, interview

Added to the mix of factors that helped Local 226 win its breakthrough card check agreement in 1989 was a political dynamic. Specifically, the gaming industry wanted—needed—the union's help legislatively in Washington. "Historically, politically they have ruled here in Nevada, but in Washington at that time... they did not have a presence. And they turned to the union to help them," explained Arnodo. "We certainly offered our help, but in exchange for that we said we wanted card check neutrality."[71] The *Review Journal*, in its three-part feature on the 1989 settlement emphasizes the political component above all others. The newspaper reported that two years prior to the landmark agreement industry executives and union leaders had begun working together politically, and that that effort had laid the groundwork for the more cooperative relationship that emerged between the union and the industry in 1989. Specifically, the *RJ* related a chance encounter between Barron Hilton (of Hilton Hotels) and Ed Hanley, who was then the president of HERE, at the Bob Hope Golf Classic early in 1987. Hilton asked Hanley for help on a tax issue affecting the gaming industry, and Hanley responded positively. The union leader set up a meeting in Chicago with Hilton, other leading hotel executives and Rep. Dan Rostenkowski, a close friend of Hanley's. The meeting was followed by a successful joint lobbying effort against the tax proposal, which would have withheld 30% from foreign gamblers' winnings in taxes.[72] "Hanley's union carried a great deal of influence on Capitol Hill," the *Review Journal* noted.[73]

For his part, Hanley wanted assurances that the Vegas casinos would not try to decertify the union. At the time, Culinary was in the third year of a five-year contract and by law employees can vote to decertify a union after three years of a contract. Hanley initially

---

[71] Ibid.
[72] *Las Vegas Review-Journal*, November 5, 1989.
[73] *Las Vegas Review-Journal*, November 6, 1989.

sought to renegotiate the contracts in 1987. In the end, what happened instead was that the hotels signed statements reaffirming their five-year contracts, which had the legal effect of foreclosing decertification. (Not all the properties signed the statements; the hotels involved in the lobbying effort did, as did other corporate casinos, while the family-oriented players refused.)[74] Four years later, the *RJ* continued to single out HERE's political connections as the decisive factor in Las Vegas labor relations. "In exchange for Hanley's clout in Washington, the hotels have rolled over and died at the negotiating table," it went as far as to say (in a news article, by the way, not an editorial).[75]

The union thus drew its political relationships in Washington into its relationship with the casinos, making its contribution to the latter relationship far more valuable. It was a pattern that has been repeated many times since then. In general, said Taylor, "in most states outside Nevada the industry is not held in very high esteem, and in order to get certain things done legislatively, sometimes they need our assistance.... they are constantly under legislative scrutiny."[76] This constant scrutiny, in turn, gives the union constant opportunities to help or hurt the industry, and thereby increase its influence. One situation in which there is political scrutiny is when a gaming operator is trying to establish itself in a new market. Describing the union's strategy in blocking the MGM's expansion hopes for the Midwest, Alexander said, "These were processes where whole towns were choosing who they wanted to operate their casino... .it was very much a 'is this the kind of company you want in your town?'" message. As noted, Culinary's intervention in these processes was often mediated

[74] Ibid.
[75] *Las Vegas Review-Journal*, June 6, 1993.
[76] Taylor, interview.

through its relationships with other labor organizations; and they were places were "labor mattered" politically.[77]

Politics played a role in the MGM battle in other ways as well. While 5,000 protesting Culinary members showed up at the MGM's opening in December 1993, those that did *not* attend included the mayor, the governor and a majority of the state's politicians. It was the first time that a governor did not attend the opening of one of Las Vegas's mega-resorts. A year earlier, the union had mobilized to defeat a county commissioner who had crossed the Frontier picket line.[78] The lesson was not lost on politicians as the MGM's opening approached and the union put pressure on them to boycott. "Union leaders pose obstacles for politicians" read a typical headline a month before the opening.[79] The sidewalk issue, too, became a political headache for the MGM. After the arrests in May 1994, the union filed a suit against the MGM, the county and the county manager, arguing that the three had conspired to deprive union members of their free-speech rights.[80] More importantly, the union succeeded in framing the issue as one of basic Constitutional freedoms. "This is not Oz. This is America. They don't own the sidewalk. We do," the *Review Journal* quoted then Culinary Secretary-Treasurer Jim Arnold telling the crowd that night in front of the MGM.[81] Agriesti said an inside contact in the executive offices at the time reported to her seeing a note on an executive's desk that said "this is a PR nightmare for us; the sidewalk issue is a PR nightmare."[82] That nightmare haunted them not just in Las Vegas, but also in the Midwest. There, the issue became additional fodder for the union in the political battles to

---

[77] Alexander, interview.
[78] Alexander, 168.
[79] *Las Vegas Review-Journal*, November 23, 1993.
[80] Alexander, 169.
[81] Quoted in *Las Vegas Review-Journal*, May 27, 1994.
[82] Agriesti, interview.

shut the MGM out of new markets. "It just didn't play well in the heartland," Alexander said.[83]

The spectacle of labor strife itself plays a political role in Culinary's battles with employers, as it did in the sidewalk issue at the MGM. The same is true of the Frontier strike, which, as noted, became exhibit A in the union's self-fulfilling prophecy of what happened to companies that bucked the partnership model of labor relations in Las Vegas. In December 1991, 12,000 people marched up the Strip in support of the Frontier strikers. A year later, union members and their supporters again marched in Las Vegas; "the December 5 rally attracted 20,000 participants, closed the Strip for four hours, and attracted national media attention."[84] The massive resistance to the Frontier's efforts to bust the union in turn generated additional opposition to the casino's management— only this time, from some new and unexpected quarters. For one, other casino owners in Las Vegas were clearly irked by the Frontier's behavior, which they perceived to be bad for the city's image; and one of them, William Bennett of Circus Circus, took a highly visible stand in support of the striking Frontier workers. He publicly blamed Frontier management for the strike, and told the *Las Vegas Sun*, "I don't see why they are putting it off on the employees... .This irritates the hell out of me. They say they can't make money, and they are paying a damn sight less than we do, and our earnings aren't too bad."[85] Bennett also provided three meals a day every day to striking workers on the Frontier picket line throughout the entire six-and-a-half year strike. ("You see things in Las Vegas you won't see anywhere else," commented Arnodo, almost euphemistically, about Bennett's support.)[86] Furthermore, then Gov. Bob Miller and other political leaders intervened in the labor dispute. In 1993, Miller appointed a

[83] Alexander, interview.
[84] Alexander, 162.
[85] Quoted in *Las Vegas Sun*, November 3, 1991.

fact-finder to talk to both sides; in 1994, when the fact finder delivered his report, Miller blamed Frontier management for the strike.[87]

In 1992, a group of political leaders called Nevadans for Labor Peace called for mediation or binding arbitration in the Frontier dispute. Frontier management refused. In 1994, Miller also called for binding arbitration. Again, the Frontier refused, and the strike dragged on for another three and a half years. It did not end until the Elardis, the Frontier's owners, sold the property and the new owner agreed to settle the strike. On display in the Frontier strike were several cross-cutting political dynamics. On the one hand, there was the Frontier's political isolation and Culinary's ability to align economic and political elites on its side to add pressure on Frontier management to settle the dispute. On the other hand, there was the obvious failure of any of these attempts to actually end the strike. Here the weakness of U.S. labor law was painfully apparent: The company had provoked the strike, everybody knew it, the NLRB issued complaints and ruled against the company, the Ninth Circuit Court of Appeals upheld the NLRB rulings and declared the company's actions illegal, and still, no legal action could compel the company to obey the law or come to the table. The appeals ruling was in September 1995, fully four years into the strike— and two years before its end. "The strikers have been vindicated at every step of the process, but ultimately, the system has failed them," said Alexander.[88]

Yet there is another twist in the juridico-political tale of the Frontier battle: The NLRB rulings made the strike an unfair labor practices (ULP) strike. That meant that the company could not orchestrate a decertification of the union. Otherwise, the strike would have been over after a year, when company strikebreakers could have, and surely would

---

[86] Arnodo, interview.
[87] *Las Vegas Review-Journal*, March 3, 1994.
[88] Alexander, 171-172.

have, voted the union out. But the ULP ruling foreclosed that option. Without that ruling, not only could the Frontier strike never have been won, it would never have become the powerful symbol it is in Las Vegas. The saga of the Frontier strike— the extraordinary determination and solidarity that kept the picket line manned 24/7 for six and a half years, the fact that not a single worker ever crossed the line, and the fact that the union won— is a tangible force that helps Culinary's organizing efforts to this day.

Unfair labor practice charges can be "extremely valuable," union leaders assert, as they were in the Fontier case.[89] In addition to their value in preventing decertifications and thus making strikes winnable, ULPs also have publicity value in organizing drives. "It's a very effective part of our campaign in the public, to show what the company is trying to do to keep people from having an organization, having a contract, that they're willing to break the law to do that," said Kline. "It exposes the company's illegal campaign, it doesn't do more than that... .and if a company is sensitive to that, that's helpful."[90] Companies *are* sensitive to it, for reasons already discussed— their desire for a clean image for their expansion efforts, their reliance on political bodies for licensing and more. It's clear that the value here is not the law's ability to curtail or rectify employer violations of the right to organize. "We use the board for tactical reasons," Taylor emphasized.[91] The Culinary Union is very clear on the distinction between the tactical use of ULPs and the prospects of winning organizing drives using the NLRB. "You can't *win* the board process... .it's not a process that results in a reasonable resolution of whether workers want a union or not."[92]

Despite these views and the general insistence on fighting for card check agreements, the union did participate in one NLRB election at a Las Vegas casino, the Santa Fe. In

---

[89] Arnodo, interview.
[90] Kilne, interview.
[91] Taylor, interview.

October 1993, despite massive labor law violations by the employer, including the firing of nine workers, workers at the Santa Fe voted to unionize. The company, predictably, appealed the results. The NLRB dismissed the company's charges in their entirely in April 1995. The company, predictably, appealed the NLRB ruling. Finally ordered into bargaining, the Santa Fe refused to bargain in good faith. A contract was never reached. The Santa Fe case was a textbook example of the impotence of the NLRB to protect the right to organize. "It demonstrated exactly what our practice, our history, our experience had been with labor board elections," said Alexander.

> We won overwhelmingly. We spent six years litigating it. Once they were forced to negotiate with us we spent another two years in negotiations that failed to produce acceptable terms. And then, the casino was ultimately sold, all the workers were fired, and it has a new owner. So an eight-year campaign has produced nothing in the way of improvements and benefits for that group of workers. It did, however, demonstrate that we're not going to do elections anymore, certainly not in Las Vegas.[93]

The Santa Fe story, too, has a second political dynamic that cross-cuts the power the employer gained from the legal aspect of the case. At the time of the union election in 1993, the Santa Fe was owned by Paul Lowden. Lowden's wife and an officer in the company, Sue Lowden, was elected to the state senate in 1992. One of her first acts after taking office was to fire a Santa Fe worker who had testified before her labor committee about health and safety problems at the hotel; the worker was rehired after an uproar of protest. By 1995 Sue Lowden was president of the Santa Fe, and in 1996 the Culinary Union set its sights on throwing her out of office. And they succeeded. "That was the first real, real big political event that the political world noticed here," said Arnodo.

> We always try to link politics with organizing, and here in Las Vegas it's not hard to make that link. But there it was, as direct as it could be: an anti-union casino owner who's trying to stop her workers from organizing. On the other hand she's a rising

---

[92] Alexander, interview.
[93] Ibid.

> star in Republican politics; people bandied her name about as a potential gubernatorial candidate... .and we were part of an effort to recruit a candidate to take her on, and we did it, and a lot of people never thought that was possible... .politically, [Sue Lowden] hasn't been heard from since.[94]

Culinary's mobilization to unseat Sue Lowden has been followed by a string of other electoral successes. The union targets races to intervene in selectively, to use its resources effectively and to "make sure that we do them right."[95] In 1998, the union helped re-elect three Clark County commissioners after Sheldon Adelson, the billionaire owner of the non-union Venetian, funded opposition candidates.[96] Moreover, Adelson had also sponsored a so-called "paycheck protection" initiative; the union succeeded in getting the Republican Party to divorce itself from the initiative, and the state's supreme court threw it off the ballot.[97] "He spent millions of dollars to take over the Clark County Commission, defeat candidates that he viewed as supportive of the union, and this is the very body that licenses him, he tried to control it... .we defeated him in '98 across the board," said Arnodo, who called it "a real watershed year." In addition, the union helped elect Maggie Carlton, a waitress and Culinary shop steward, to the state senate that year. In 2002, Local 226 again shocked the political establishment when they got involved in a *Republican* primary in a Clark County Commission race. The candidate they backed, Mark James, a former state senator

---

[94] Arnodo, interview.
[95] Ibid.
[96] Most of Las Vegas, including the Strip, is not actually part of the city of Las Vegas. It is unincorporated Clark County, and thus the governing body that regulates the city and state's economic heart is the Clark County Commission. It is thus the most powerful political body in the state. "It's often said," noted Arnodo, "that other than being governor, being Clark County commissioner is the most important office in Nevada"; interview.
[97] "Paycheck protection" initiatives, so named by their supporters, require unions to receive annual written approval from each member before spending any portion of their dues on political activities. This has the obvious effect of completely crippling union political contributions and legislative action.

who had "stood with us on some very difficult issues," defeated a candidate backed by the Christian right by about 200 votes, and won the general election as well.[98]

Culinary's ability to mobilize its 50,000 members and their families, friends and neighbors in election contests undergirds the rest of its political influence. The union's political muscle— "demonstrating to people what the union can do," as Arnodo put it— has increased their access to government bodies and actors. "It's all a product of they've seen what we can do on the streets. Especially in an era of low voter turnout, campaigns have a hard time getting volunteers, and we have proven time and time again that we can do things that no one would ever expect, politically, through our grassroots efforts. So it's earned us a place to get in the door and have them listen," said Arnodo.[99] The greater attentiveness and responsiveness of politicians in turn translates into an increased capacity of the union to help or hurt the industry on legislative, regulatory or political issues.

As everywhere else, current U.S. labor law gives Las Vegas's casinos considerable advantages in the fight over unionization. In Vegas, this was most clearly on display at the Santa Fe, where the union "won" at every step and yet lost in the workplace. But the anti-worker bent of the law is also obvious in struggles to establish card check, like the one at the MGM Grand; there simply is no legal recourse for making an employer agree to this straightforward method of determining majority status. While NLRB processes clearly give an edge to employers, the union has deftly utilized those aspects of the law that still protect workers (collectively if not individually), most notably, ULPs. Moreover, Culinary has compensated for the inability of the state *qua* NLRB and the apparatus of labor law to provide a meaningful right to organize by engaging other state actors by drawing them into the union's power struggles with employers. Specifically, the union has leveraged the

[98] Arnodo, interview.

relationship between the casinos and various political entities by bringing its own relationship with political actors (*qua* voters) to bear on that relationship. This strategy has been particularly effective because there are multiple junctures at which the industry-state relationship is vulnerable to exactly the kind of intervention the union has so consistently pursued. The multiplicity of the leverage opportunities is in part a product of the fractured nature of "the state" in the U.S.; this is reflected, for instance, in the fact that casino licensing decisions are made at the state or local level, and that the regulation of the industry happens at multiple governmental levels, all of which gives the union many more venues in which to engage employers. Under these circumstances, the increased capacity of the union to help or hurt the industry is what makes the labor-management partnership in Las Vegas a genuine partnership. "Our political development... has given us value to the gaming industry that is organized, and helped make the partnership more an equal one, because I think they realize our value politically... .It's why politics helps us maintain card check neutrality."[100]

VII. Conclusion

One union veteran recalled the 1984 strike as "a literal Marxist paradigm— from judges to cops, the state was completely aligned with the casino owners," according to journalist Mike Davis.[101] In 1990, during a strike at the Horseshoe, a downtown casino that was part of the older family-owned wing of the industry, the union's relationship with the cops had not improved much. "I couldn't be on the picket line for more than a minute

---

[99] Ibid.
[100] Ibid.
[101] Mike Davis, "Armageddon at The Emerald City," *The Nation* (July 11, 1994), 47.

without getting arrested," said Arnodo, who was arrested 35 times during the strike.[102] Yet by 1994, when union members lined up to get arrested in front of the MGM, the relationship had changed dramatically. By all accounts, police and union officials worked together to orchestrate an orderly demonstration, "and the cops appreciated our ability to handle that situation."[103] While over 900 strikers were arrested in the 75-day strike in 1984, only a handful were arrested in the entire six-and-a-half year strike at the Frontier (not counting deliberately staged civil disobedience arrests). The union's changing relationship with the Las Vegas Metro Police was emblematic of its growing political clout over the years. Its improved political strength, in turn, was just one part of Culinary's increased power in its relationship with the gaming industry. When the Culinary Union began to rebuild and construct an organizing program in 1987, it had tremendous structural advantages— most notably the existing union density and the vulnerability of employers during an era of expansion and transformation— and it used its unique circumstances to create the most successful organizing program anywhere in the U.S. labor movement. Labor market, corporate and political factors all reinforced each other, and each success strengthened the union further and gave it greater capacity for the next steps in its program.

Intervening in employers' expansion plans, drawing on legislative and regulatory relationships, building an electoral machine, increasing access to politicians, setting prevailing wage and benefit standards and mobilizing its vast membership— these tactics together were designed to, and have succeeded in, allowing Culinary to literally sidestep the disadvantageous NLRB election process that most unions must contend with to have any

[102] Arnodo, interview. Many of the family-owned properties that had not participated in the corporate-owned casinos' effort to bust the union in 1984 in 1989 took a harder line towards Culinary. This time it was the corporate players that were willing to settle, while the family businesses decided to try and rid themselves of the union. The strike at the Horseshoe was one result of that effort. Like the Frontier strike, it was declared an unfair labor practices strike, and won by the union after 11 months.

chance of winning recognition. A stunning example of how effective the union has been in this effort is the Stratosphere Hotel. The Stratosphere opened union in 1996, after a card check recognition process that was *not* the result of either a trigger agreement or a major battle like the MGM fight. The hotel simply agreed, amicably, to the union's standard. Taylor cites the union's legislative-political strategy and the Frontier strike as factors in the Stratosphere's decision; "they weighed all that stuff up, and I think that's why they gave us a card check neutrality."[104]

As of this writing (summer 2003), the union's organizing efforts are focused on several targets, including the Palms Casino, the Aladdin and the Venetian. Culinary is also in the early stages of preparing to take on Station Casinos, a chain that owns nine casinos in the city and employs roughly 8,000 to 9,000 potential Culinary members. In addition to the increased power the union has in industry and political relationships as the result of its cumulative success, its growth has also given it increased organizational capacity. "We've grown from a point of being able to do one campaign to doing a whole bunch at the same time," said Kline, adding, "so it's pretty exciting what's going on here."[105] Of the efforts now underway, the battle at the Venetian has been the one with the highest profile. As in the MGM Grand campaign, the union began its efforts before the hotel was even built. In 1997 it issued a report, titled *Castles Made of Sand: A Critique of Las Vegas Sands' Planned Mega-Resort*, warning investors of various flaws it perceived in the company's business and financing plans and citing the *Review-Journal's* comment on the "brewing brouhaha with the Culinary Union" as the latest evidence that an anti-union stance is a bad business decision in Las Vegas. The union also organized successfully to have the County Commission reject the

---

[103] Ibid.
[104] Taylor, interview.
[105] Kline, interview.

comp any's traffic report for the new resort (another example of the regulatory relationships that give the union leverage opportunities). The Venetian nonetheless opened defiantly non-union in 1999, and continues to operate non-union. The battle is far from over, however, and the union had anticipated a long struggle from the beginning. "We thought that was about a 10-year campaign," said Taylor. "After the Frontier, our idea of time is quite a bit different than most people's."[106]

The Culinary Union's idea of time may be different, but so is it's structural situation, and its resources. HERE Local 226 provides an excellent lesson for other labor organizers in how to methodically plan, meticulously research and generate multi-faceted campaigns that leverage numerous relationships. Yet even so, the fact that it takes several years to prevail against employers who are determined initially to operate non-union suggests on a bigger scale the same problem SEIU Local 1199FL has in its home-by-home battles to organize the Florida nursing home industry. In Culinary's case, because of its resources, this model is viable— indeed, phenomenally successfully— in the local market in Las Vegas, but it cannot simply be extended nationally. "We can afford here in some respects to have a struggle that takes five years, six years, because we have critical mass already," reflected Arnodo.

> But for a labor movement that is just nationally fighting to survive, it's a big question: How do you deal with the fact that even when you win, it takes you five years to get 1,000 workers, or 2,000 workers? That's pretty tough, and as a national labor movement we've got to figure out strategies that obviously bring people in at a faster pace.[107]

What those strategies might be remains elusive. For now, it seems clear that while the dual obstacles of employer hostility and ineffective labor laws can be effectively circumvented in some local settings, they still foreclose the possibility of organizing on scale nationally and reversing labor's decline.

---

[106] Taylor, interview.

[107] Arnodo, interview.

CHAPTER 5

New wine in old wineskins: Information Technology organizing in Seattle

I. Introduction

In the spring of 1998, a group of information technology (IT) workers in Seattle founded the Washington Alliance of Technology Workers, launching a hopeful and determined effort to bring the labor movement to the almost wholly unorganized high-tech sector of the U.S. economy. Several months later, the fledgling union, known as WashTech, affiliated with the Communications Workers of America, becoming CWA Local 37083. The official founding of WashTech and its formal inclusion in the house of labor through its affiliation with CWA followed a year of contacts, meetings and brainstorming that brought together seasoned labor organizers and techies in an unlikely but dynamic encounter reminiscent of a Reese's commercial. Marcus Courtney, who was a software tester at Microsoft at the time and is now WashTech's president, recalled the labor organizers' lack of knowledge of the industry; "they didn't know anything about the tech industry... their level of knowledge and expertise about how the industry worked, how it operated, it was zilch."[1] For their part, the techies had no experience with unions and the organizers felt they "needed some focus, they needed someone to teach them basic organizing techniques," said Jonathan Rosenblum, who was then the organizer for the Union Cities program at the King

[1] Marcus Courtney, interview by author, Seattle, WA, June 20, 2003.

County Labor Council (KCLC). He added, "we figured between their talent as tech people and our experience as organizers we could actually create something."[2]

And create something they did. WashTech began with a handful of temp workers at Microsoft, but by the time it was officially named and organizationally incorporated, its members came from other high-tech firms as well as Microsoft, and some were full-time employees. While the bulk of its participants were Microsoft temps, from its earliest days it had a vision of its mission as an industry-wide, rather than an employer-specific (Microsoft-specific) union, and a union that would speak to the issues of permanent workers as well as temps. It was clear from the beginning that the structure of the industry and the concerns of its workforce meant that this union would look different from any other union, and that labor's traditional gauges of success, particularly the establishment of collective bargaining relationships, would be inadequate. In 2003, WashTech had only 250 dues-paying members and just two collective bargaining agreements covering tiny workplaces.[3] But it had a mailing list of 13,000, its website averaged about 2,000 pageviews per day, and in one web action the organization undertook early that year, it generated 9,000 constituent e-mails to Congress. WashTech has sponsored state legislation and has a regular presence in Olympia, the state capital. The union also has a respectable media presence. And its activism has been a contributing factor, sometimes the main factor, in some of the improvements in working conditions for temp workers at Microsoft.

These accomplishments are significant compared to what came before— i.e., nothing— but they are also very tenuous. WashTech does not have a mass base or stable bargaining relationships; and they have yet to succeed in getting any legislation to pass. the

---

[2] Jonathan Rosenblum, interview by author, Seattle, WA, June 21, 2003.
[3] A contract at U.S. Union Network covers three WashTech members, and one at Drakka Computer Solutions covers four.

union has succeeded in making itself a player in discussions about the IT industry; it has not yet found a way to build power to take on IT employers.

WashTech organizers felt from the outset that their goal was not just to organize the high-tech industry but to make the labor movement *relevant* to IT workers; indeed, they understood that the industry could never be organized unless unions *were* relevant to IT workers. One of the obstacles to union relevance to the IT workforce is that the traditional, employer-based, collective bargaining-centered models of unionism are largely untenable in the industry because of its heavy reliance on contract labor and also because of the mobility of its workers. WashTech early on abandoned hopes of being able to organize through NLRB elections, and in the absence of any kind of significant leverage, they also knew that voluntary recognition and collective bargaining were out of the question for the foreseeable future. The union needed to find ways to address workers' issues outside of these formal channels, and organizers were keenly aware from the beginning that they were forging new paths and doing it without any road maps. That consciousness gave the WashTech project a sense of excitement. "There was an element of 'this is unheard of,'" recalled Gretchen Wilson, a 22-year old organizer at the time, "there was a sense of unlimited possibility for what we could accomplish."[4]

The feeling of "unlimited possibility" came both in spite of and because of WashTech's extremely weak structural position vis-à-vis the industry. There is virtually no union presence, no union density, in the IT industry either nationally or in Seattle.[5] Moreover, IT workers weren't clamoring for union representation; it was a workforce whose

[4] Gretchen Wilson, interview by author, New York, NY, June 30, 2003.
[5] Hard numbers are hard to come by. Rosenblum said less that 2% of IT workers nationally are organized. The Bureau of Labor Statistics (BLS) provides density figures by sector, but information technology is not one of BLS's recognized sectors. IT work cuts through several sectors, making it impossible to deduce density figures.

impressions of unions were largely based on anti-union stereotypes and whose predominant outlook was entrepreneurial; by and large IT workers saw unions as neither necessary nor relevant to their lives. The labor movement, meanwhile, was almost wholly unprepared to undertake IT organizing. WashTech did not have the experiential infrastructure within labor to support it initially; and they began without resources— no money, no staff, no office and no union affiliation. Furthermore, the high-tech industry was and remains almost completely unregulated; thus union organizers have fewer opportunities to leverage political or regulatory relationships in their efforts to build power vis-à-vis industry employers. The contrast between WashTech's position and the Culinary Union's position in Las Vegas could not be starker: across the board, almost every juncture that offered an advantage to Culinary workers seeking to organize provided no similar advantage to WashTech members. If that was the bad news for the new IT union, there was worse news: Any meaningful bargaining unit, any bargaining unit that would give workers power in their relationship with their employer, was effectively precluded by NLRB rules. Temp workers and full-time workers could not be organized into the same bargaining unit; nor could temp workers from a single agency who worked at different user employers be organized together.[6]

The structure of the IT industry's labor market made it union-proof— at least as long as "union" was understood in terms of collective bargaining. "We start not even at square

[6] Prior to the NLRB's August 2000 ruling in *M.B. Sturgis/Jeffboat Division*, temp workers in these situations had to obtain the consent of both the agency employer and the user employer in order to gain collective bargaining rights; needless to say, such consent constituted an "insurmountable obstacle to organizing"; Nancy Schiffer, "Organizing Contingent Workers post-*Sturgis*," Building and Construction Trades Department, AFL-CIO Attorneys' Conference (May 14-15, 2001), 2. *Sturgis/Jeffboat* eliminated the consent requirement in these situations, though it remained silent on the issue of whether temporary workers from multiple agencies at one user employer could organize under its revised standard. For more, see section below on "Legal constraints and political possibilities."

one, but at negative three," WashTech co-founder Mike Blain told *In These Times* in 2000.[7] The important thing for Blain, Courtney, Wilson and others who birthed WashTech was not where they started but *that* they started. Their ultimate goals for the union definitely do include collective bargaining, but they felt that they could not just sit around and wait until the conditions were right for collective bargaining; indeed, they believed that the conditions would never be right unless they worked to make them so. So the WashTech project began at "negative three," with far more modest goals. Its primary aims, then and still in 2003, were to build worker consciousness among workers in the industry and to build organization. The union's campaigns are consciously designed to help forge a collective identity and convince workers that collective action is both necessary and effective. One of the ways in which WashTech tries to do that is by engaging in direct organizing, i.e., workplace efforts to win improvements without any formal process of establishing legal bargaining rights.

Legislative activism is the second crucial component of WashTech's organizing strategy. Again and again, the union has found that while many workers in the industry may not be ready for the "u" word, most are ready to agree that IT workers need an organized voice in the political arena. WashTech has sought to be that voice. Its concrete gains politically and legislatively have been minimal, but it has succeeded in being identified as the leading advocate for tech worker issues. It is on legislative matters that WashTech's formal inclusion in labor's institutional structure has proven most valuable. While WashTech by itself would have very limited access in Olympia, its affiliation with the state labor federation opens doors for it. The active support that both the state federation and the county labor council give to WashTech's political agenda in effect extends the clout of the state's entire labor movement to WashTech's political efforts. And here there is one piece of good news

[7] David Moberg, "Temp Slave Revolt," *In These Times*,

amidst the otherwise bleak prospects for building power for IT workers: Both Seattle and Washington state have strong labor movements, above-average union density and a respectable amount of union political influence.

Washtech's organization-building and its political work are anchored in and enhanced by its savvy employment of Internet technologies. This is hardly surprising from a union of techies, but the consequences are noteworthy nonetheless. From webforms to e-mail harvesting, many of these technologies are, fundamentally, capacity-enhancing, and they've helped WashTech reach and mobilize far more people than they could have without them. The union has also shown a keen appreciation for the value of traditional media coverage and it's consciously incorporated a press component in its strategy. The skillful combination of new media with traditional media has had an amplifying effect in both arenas and has helped establish a high profile for WashTech in Puget Sound, the heart of the IT industry.

II. Data sources

Primary data sources once again included in-depth interviews with union leaders and members. I interviewed the union's two paid staff members, Marcus Courtney, who is also the elected president of WashTech, and Karole Gorman. The rank-and-file leaders interviewed were Mike Blain, one of the union's founders, and David Larsen, both of whom serve on the executive board. I interviewed Squire Dahl, an active member. Additional interviews were with union organizers who were central to the organization's founding and early work: Andrea de Majewski, who was a CWA organizer; Jonathan Rosenblum, who

---

http://www.inthesetimes.com/moberg2416.html (June 10, 2000, viewed June 27, 2000).

worked at the King County Labor Council (KCLC); and Gretchen Wilson, a United Food and Commercial Workers (UFCW) organizer at the time. Other sources included union reports and surveys, union literature, and internal memos and meeting notes, as well as external memos to others. WashTech's website and its on-line publication *WashTech News* were extremely valuable because they provided a comprehensive chronicle and archive of WashTech's relevant developments in the industry and the union. There was a wide range of media sources; the biggest sources were the two Seattle dailies, the *Seattle Times* and the *Post-Intelligencer*. Other news sources were less comprehensive but still quite useful, including national coverage, most prominently from the *Wall Street Journal*, and a myriad of industry publications, such as cnetnews, itnews, computerworld and wired. On the issue of outsourcing in particular, international media coverage was also helpful, most notably from the *Asia Times*. Industry data came partially from union reports, and to some degree from industry groups like WSA and the Technology Alliance.

III. Collective identity and collective action: "it's absolutely a union"

The impetus for what eventually became WashTech was the working conditions faced by temporary workers at Microsoft, also known as agency contractors or permatemps. While contractors worked side by side with full-time, or permanent, employees, sometimes doing the identical job, they were treated by the company as second-class citizens in a number of ways, big and small. They were not invited to the ship parties for the products they worked on, while full-timers were. They were barred from company sports teams and other social clubs. They had far inferior benefits, and no stock options. And they were visibly identified as agency contractors by an "a-" prefix in their e-mail addresses and the

orange employee badges they wore. All this "high-tech apartheid stuff," as Rosenblum termed it, led to some grumbling here and there by temp workers.[8] Some, like Blain and Courtney, started surfing the web looking for information on unions and organizing. Eventually, a few of them made contact with the King County Labor Council (KCLC), where Rosenblum took an active interest in pursuing the possibility of union organizing at Microsoft. Those contacts led to an initial meeting in September 1997 at the labor council, following which the handful of contractors and several interested union organizers involved began organizing.

"We had a couple of meetings but nothing was really happening in a significant way, until the boss became our organizer," recalled Rosenblum, employing a classic organizer expression to illustrate how employer behavior generates worker interest in the union.[9] The "boss" in this case took the form of the Washington Software and Digital Media Alliance (now WSA), the industry's main lobbying group, and what it did was lobby the state's Department of Labor and Industries (L&I) for an exemption from overtime rules for computer professionals. Specifically, it sought to end time and a half overtime for those earning $27.63 an hour or more. The exemption was squarely aimed at permatemps, who are employed as hourly workers. Microsoft, WSA's biggest member, was and is also the biggest employer of contract labor in the IT industry; at the time of the proposed L&I rule change, about a third of its 18,000-member workforce in Redmond was temporary workers. L&I obliged the industry, conducting the mandatory public commentary process so "quietly," as one newspaper put it politely, that virtually no one who would be affected by the rule change knew about it until the *Seattle Times* carried a story on December 5 noting that the comment period had already ended and that a hearing on the issue had featured only five speakers, all

[8] Rosenblum, interview.

in favor of the change.[10] The *Times* story generated an angry backlash from contract workers, and within days L&I agreed to re-open the comment period. In the following two weeks, the department received 750 letters opposing the rule change. Contractors in the industry objected vehemently to both the proposal itself and to the process by which industry and government officials had tried to sneak it by people. One letter said, "I grew up in New Jersey, so smoky back-room deals are nothing new to me. Perhaps in Olympia they are smoke-free, but this one smells just as bad."[11]

The importance to temp workers of time and a half overtime, in the absence of other benefits or safeguards, was dramatically evident in many of the letters. One computer systems contractor wrote:

> My one, single, only protection against abuse, exploitation and professional burnout is overtime pay... .In 1997, I did not get paid for a single federal holiday. I did not receive vacation pay, sick pay, life insurance or company-sponsored professional education to keep me employable... .My only protection against routine 90-hour workweeks was my overtime rate; in some cases in meant the difference between going home at all some nights... .In a typical year at a typical company, there are paid holidays, paid sick leave, paid vacation, medical insurance, disability insurance, retirement plans and incentives for performance. In a typical year, I receive only overtime pay... .We are already exploited and worked to extreme limits; denying overtime pay for overtime work would lead us into a modern factory sweatshop.

Another letter attested to just how extreme the limits were:

> Not long ago, a developer in my building was found dead at his desk. The ambulance wasn't called immediately, because his coworkers just thought he was asleep. It's not unusual for someone to be asleep in their office, having worked all night trying to make some milestone or other. The entire company deliberately operates in a mode of critical high stress. In this atmosphere, is it reasonable to remove the brakes?

At 3pm on New Year's eve, the Department of Labor & Industries implemented the rule change despite the overwhelming objections to it. For the small group of contractors and

---

[9] Ibid.
[10] *Seattle Times*, December 5, 1997.

organizers meeting over at the labor council, the incident gave them an issue to organize around, a ready-made object lesson about why temp workers needed a collective voice, and perhaps most importantly, a mailing list.

The group obtained copies of all 750 letters sent to L&I through a Freedom of Information Act request, extracted e-mail addresses and other information from them, cross-referenced the information with the Microsoft employee directory to find out people's positions and locations, and sent a bulk e-mail to all the people (400 to 500 total) for whom they could obtain addresses ("we basically spammed everybody," admitted Blain).[12] From there, they began systematically contacting people through phone calls as well as e-mails, talking to them about what their job issues were and inviting them to meetings. The KCLC provided meeting space and staff support. The labor council hired an intern, Derek Kavan, to work on the project; he and Gretchen Wilson ("who was at the time working as a salt for a UFCW campaign and was bored out of her mind," explained Andrea de Majewski, a CWA organizer involved in the organizing) built a database, organized phone lists and provided other crucial infrastructural support for the project.[13] Organizers were careful to set themselves modest goals at the outset; explained Rosenblum,

> Our goal was to create a fight around this issue [the rule change] and to cost the employers and to begin to build organization through that fight. So we didn't define winning the fight as the victory, we defined the fight itself as a victory. The press work that resulted from it, the visibility, the organization, these were all significant steps forward for tech workers.[14]

But while the L&I ruling had helped generate a core of activists, the nascent organization faced enormous obstacles. In addition to the legal impediments to organizing

---

[11] Organizers obtained copies of all the letters through a Freedom of Information Act request. Jonathan Rosenblum gave me copies of some of the letters from a set he had in which the writers' names were blacked out. The subsequent two quotes are also from this set of letters.
[12] Mike Blain, interview by author, Seattle, WA, June 19, 2003.
[13] Andrea de Majewski, interview by author, Seattle, WA, June 18, 2003.
[14] Rosenblum, interview.

(which will be discussed at greater length in the next section) there was the fact that the industry was almost entirely unorganized. That meant there were no IT-union relationships to draw on, no organized tech workers who could offer their solidarity, no successful organizing models; in fact, the labor movement was by all accounts unprepared to take on this kind of project. "There was institution-building that needed to happen within the labor movement to even try to be able to look at how you could effectively organize this sector of the economy. And it was very clear they had not even looked at that, they didn't do any work, there was not even groundwork of figuring things out like that," said Courtney.[15] Moreover, contract workers almost by definition are a very vulnerable workforce, making organizing harder both because employers have more power in their relationship with these workers, and because workers are (understandably) more cautious as a result. In particular, there is no job security. It is the "flexiblility" of contingent labor— the ability to cancel projects and shed workers at a moment's notice, to outsource operations, etc.— that companies like Microsoft tout as necessary for their dynamic brand of capitalism. In recent years employers in the industry have heightened insecurity and exerted downward pressure on wages through both increased offshore outsourcing and the use of H-1B and L-1 visas that bring foreign nationals into U.S. high-tech workplaces at lower wages.

At the time that WashTech started, the dot-com boom was in full swing, an additional factor that made recruiting workers to the union's cause more difficult. "In '97, we were still in the bubble, everything was booming, the market was booming, you could get a job at the drop of a hat," recalled Rosenblum.[16] Workers felt like they didn't need a union. In an industry always known for the entrepreneurial and libertarian bent of its workers, the boom years reinforced individualistic beliefs and tactics. Moreover, tech firms' use of stock

[15] Courtney, interview.

options as a form of compensation reinforced workers' identification of their interests with the employers' interests. "What happened during the bubble, and even amongst the contractor workforce, there was this huge notion of people's economic interests were aligned strictly with management," said Courtney,

> and then with the whole notion of stock options, it totally fueled that idea of alignment. Because rank-and-file people were millionaires! That is true. This is the thing... it was like becoming a psychological crisis for people our age in this town, and I imagine in Silicon Valley and these places, the fact, 'oh my god, I'm 30 years old and I have to work the rest of my life!' I mean, everybody knew somebody that was a millionaire, or was close to be worth a million on paper, and 'what did I do wrong?' So it was like this whole idea of the company is good, I'm going to have all these stock options, things are great.[17]

To the extent that the bubble fueled these attitudes, the subsequent dot-com implosion presented something of an opportunity for WashTech. Blain, for instance, contrasted earlier years when workers' attitude was "unions are fine but they're for people that need it, mineworkers or whatever" with 2003; "but now," said Blain, "people are saying, well unions may not be the best solutions, they have their own baggage, but we need something, we've got to organize because we're getting crushed."[18] The dot-com bust, however, is a double-edged sword at best for WashTech. For while it may have convinced more workers that they need collective action, it has also made workers more vulnerable. Slack labor markets like the one that has characterized the Seattle IT sector since early 2001 favor employers. Moreover, with unemployment among IT workers over 10%, many WashTech members and activists simply no longer have workplaces in which to organize.[19]

Thus the boom and the bust years in the IT industry have both presented challenges for WashTech organizers. The most fundamental challenge, union leaders agree, has always

---

[16] Rosenblum, interview.
[17] Courtney, interview.
[18] Blain, interview.

been convincing workers of the need for a union. While the industry's contraction since February 2001 put a dent in workers' perceptions of their relationship to their employers, it has not significantly altered it. "Collective bargaining at a significant mass scale can only successfully happen when enough workers have dealigned themselves from the interests of management, and are willing to fight for their own interests at a very significant level. And that hasn't happened yet in the industry," assessed Courtney.[20] Moreover, from the beginning, WashTech has had to struggle against anti-union stereotypes that many workers held. While they expressed interest in working collectively, they rejected the label 'union.' Blain illustrated the challenges organizers faced when talking to workers:

> 'OK, what do think about the fact that you've been working at Microsoft for four years and you haven't had a single day of paid vacation, and you have to pay half your co-pay for this crappy medical plan?' 'Oh, that's bullshit. My agency's a total parasite... we need workers to come together and organize around benefits stuff.' 'OK, what do you think about the fact that you're getting paid 12 bucks an hour working at the most profitable company on the planet?' 'Oh, that's bullshit.' But union? 'No, no, no! We don't want a union. They shoot at people. They break your knees.'[21]

Thus from the outset, organizers faced a fundamental challenge: they had to convince workers that they *were* workers, that their interests lay with each other and not with their employers, and that the word "union" was synonymous with organized collective action and not organized crime. By way of underscoring the difficulty WashTech faced in organizing Seattle's IT workforce, consider the contrast to HERE's experience in Las Vegas. There, Robert Maxey had to go outside the city to recruit an anti-union workforce for the MGM Grand; casino workers in Vegas are far more worker-conscious and more union-

---

[19] Marc Doussard and Sharon Mastracci, "Uncertain Futures: The Real Impact of the High-Tech Boom and Bust on Seattle's IT Workers" (Center for Urban Economic Development, September 1, 2003), 8.
[20] Courtney, interview.
[21] Ibid.

conscious than IT workers in Seattle. "The strategy," said Andrea de Majewski, who was a CWA organizer and one of the people that got WashTech off the ground,

> has been to build a consciousness of workers in the industry as such. And at the same time to build up the idea of an organization of workers as a necessary and valuable tool for people who do work in the industry... .The real power we need to build is in the consciousness in the workers, because it just ain't there. People aren't necessarily given to believing that collective power is something that they need in this industry. So that's where we need to go. And if we take on Microsoft or take on Amazon or take on S&T Onsite or anybody along the way, the goal at this point has got to be how we're building a profile in the industry among the workers, that's the real goal.[22]

All of WashTech's work is built around this primary goal. A central component of that is what Courtney describes as a "dealignment strategy," the effort to get workers to break their identification with the employers and begin to identify with their coworkers instead.[23] Part of how WashTech does that is by trying to discredit management, particularly at Microsoft. The union documents and publicizes instances where the company has lied to its workers, where it has implemented policies that negatively affect workers, and similar developments that could (should) give workers pause in their assessment of the company as a benign provider.

Another tactic has been to debunk popular and press myths about the wealth of IT workers. Seattle newspapers have frequently reported on high average salaries among IT workers, and particularly among software makers. "Area Software Workers Earn $400,000 a Year on Average," a September 2000 *Seattle Post-Intelligencer* headline read, for instance.[24] Yet while the statistical average wage in the IT sector is indeed high, $237,749 in 1999, 90% of all IT workers make less than this average. That is because the average is skewed by a small number of people with astronomical salaries, largely the result of stock options. The *median*

---

[22] De Majewski, interview.
[23] Courtney, interview.
[24] Cited in Worker Center, King County Labor Council, *Disparities Within the Digital World: Realities of the New Economy* (2001), 9.

wage for IT workers in 1999 was $65,000.[25] Neither the mean or median figures includes contract workers, who make less than full-time workers.[26] (These wage figures are still significantly higher than overall wage figures for Washington state.) The promotion of the image of six-figure-salaried IT workers reinforces the idea of employers as great benefactors and creators of wealth, thus undermining efforts to develop more critical perspectives among workers, and also limits public sympathy for any complaints coming from IT workers. To counter this problem, WashTech commissioned a study (funded by a grant from the Ford Foundation) that took an in-depth look at IT wages and work conditions. In addition to highlighting the difference between the misleading average wage and the median wage, the report also exposed the huge disparity within the IT workforce. Workers in the bottom rungs of the industry are, in fact, low-wage workers. "Within King, Snohomish and Pierce counties, 7,250 people, or 15% of the IT workforce, earned less than a living wage in 1999. Another 5% barely earned a living wage, garnering under $19.00 an hour," the study revealed.[27] When the study was released in December 2001, WashTech promoted it through its newsletter, making the full report available on its website, and also released it to the corporate media. "The earnings gap is wide among high-tech workers" read a *Post-Intelligencer* headline on the report.[28] This report, and others WashTech has also done, also gave the union an opportunity to highlight other issues besides compensation that are problems for IT workers; for instance, lack of benefits for contractors, lack of job security and advancement opportunities, and lack of employer-supported training.

---

[25] King County Labor Council, 10.
[26] Ibid., 15. The King County Labor Council report cites an average wage of $51,088 for agency contractors, but cautions that it is difficult to derive average wage data for this population because of irregular employment patterns.
[27] Ibid., 13.
[28] *Seattle Post-Intelligencer*, December 6, 2001.

The most effective technique WashTech has developed for discrediting Microsoft and driving a wedge between the company and its workers is the cultivating and publicizing of embarrassing leaks of confidential information. Within a month or so of launching its website, WashTech wrote a story about a Microsoft contractor being blacklisted. The contractor had provided the union with an e-mail thread and the union "took the whole e-mail and stuck it on the website, wrote this story, 'agency threatens to blacklist contractor for getting a real job'... we like broke the ice on that issue," recalled Blain, who noted that many had long suspected that Microsoft blacklisted people.[29] A year and a half later, in October 1999, WashTech broke a much bigger story about Microsoft's keeping of secret personnel files on contractors and its blacklisting of contractors. The union got the scoop when it anonymously received a number of the personnel files, and then verified the existence of up to 10,000 similar files through Microsoft workers. WashTech posted an extensive story on its website, quoting multiple files that clearly showed that the company blacklisted workers, and that also showed it violated a number of federal laws, for instance for blacklisting employees for discussing their pay with co-workers (protected by the NLRA) or in one case, terminating a contractor because of his disability.

Furthermore, WashTech exposed Microsoft's instruction to its managers to lie about the existence of the files, quoting e-mail messages that directed managers to say "we don't keep a file on nonemployees." The union also asserted that Microsoft's refusal to let workers see their personnel files was in violation of state law, which requires employers to let workers see their files and have the opportunity to rebut any information they feel is inaccurate.[30] The day after *WashTech News* broke the story it appeared in both the *Seattle Times* and the *Wall Street Journal*. The company's response, as reported in the corporate media stories, was that

[29] Blain, interview.

the files at issue were not personnel files but merely "customer feed-back forms," but the linguistic maneuver looked rather unpersuasive, and Microsoft clearly had egg on its face.[31] Three months later, the state's Department of Labor and Industries issued a ruling holding that contract workers had a right to review the files and that Microsoft was obligated to show them to contractors. Again, the story drew press attention; "Microsoft temps score new victory," the *Seattle Times*' headline proclaimed.[32] WashTech was still getting mileage out of the story two full years later, when it helped get legislation introduced in the state senate that would guarantee temp workers the right to see personnel files kept by user employers.[33]

Inside information from Microsoft workers helped WashTech generate an even bigger story in early 2003. The previous summer, the union had obtained a leaked copy of a Power Point presentation made by Brian Valentine, senior vice president of the Windows division, to department heads. The theme was "think India," and the presentation mapped out the software company's plans for outsourcing more of its work to Indian firms. Union leaders realized immediately that if they positioned themselves right they could use the confidential information to deliver a major body blow to Microsoft's image as Seattle's great benefactor and provider. By revealing the company's strategy for reducing its labor costs through offshoring— and portraying it as a move of pure greed— WashTech was able, once again, to repeat the theme that IT workers needed a union to protect themselves against a powerful employer. "Do you think there's something wrong about a company with more than $40 billion in the bank selling your job to the lowest bidder?" one WashTech leaflet asked. "Do you think the last thing this area needs is less job security?" To maximize the leverage it could get out of this story, the union held onto the Power Point information and

---

[30] *WashTech News*, October 26, 1999 (http://www.washtech.org, viewed June 15, 2003).
[31] *Seattle Times*, October 27, 1999; *Wall Street Journal*, October 27, 1999.
[32] *Seattle Times*, January 25, 2000.

released it only in January 2003, after it had time to carefully plan a campaign around it. The ensuing campaign proved to be WashTech's most successful ever; it generated enormous media coverage, and drew thousands and thousands of IT workers into the union's orbit (the union's work on the outsourcing issue will be discussed in greater detail in the "Using old and new media" section below).

The leaks of confidential company data in both the personnel files and offshoring cases demonstrate how even a company as powerful as Microsoft, despite the enormous advantages it has over its workers and even more so over its contract workers, is also vulnerable to those workers. WashTech has made great use of this vulnerability by parlaying the release of sensitive information into public relations hits against the company. Workers also have power in relation to the company in more immediate, fundamental ways through the skilled labor they contribute to the company. How potent their leverage over Microsoft is varies, of course, depending on the individual skills and the labor market for workers with those skills. It also depends on workers combining their efforts to use the power their skills give them. In a company as big and as stratified as Microsoft, effective worker combination overall would be very difficult to achieve and WashTech is nowhere close to having this level of organization. However, within the company as a whole, different divisions or individual product groups sometimes present the opportunity to generate a major disruption with a relatively small handful of people. In one case in particular, that of Microsoft's TaxSaver software unit, the company was sufficiently dependent on a group of 18 workers that those workers were able to successfully fight for significant workplace changes.

TaxSaver was Microsoft's answer to TurboTax, the leading accounting program, and among the roughly 150 developers, product managers, software testers, technical writers and

---

[33] *WashTech News*, January 23, 2002 (http://www.washtech.org, viewed June 16, 2003).

others working on the software were a group of 18 tax analysts. These were workers, mostly CPAs, MBAs and lawyers, who brought the knowledge of the tax codes and tax laws to the project, and who also did some programming work. All the members of that group were agency contractors, and they discovered in the spring of 1999 in talking to each other that there were enormous discrepancies in what they were paid; their compensation ranged from $15 to $35 an hour, literally for the exact same work.[34] The tax analysts were also unhappy with their health benefits, which included a $300 monthly co-payment for family coverage.[35] Grumbling against these conditions, as well as the ubiquitous second-class status that came with being "orange badges," eventually led to an organized conversation over dinner, and from there a decision to contact WashTech and a conscious choice to pursue improvements in their work environment as a group. "We agreed that everyone joining WashTech would give us a more unified voice, and that if we were going to pursue these goals being unified as a group was the way to go about it," said Squire Dahl, one of the group's leaders. The group began organizing independently and then sought out WashTech, but WashTech's mere existence was a powerful example without which, Dahl felt, their own effort would not have happened. "I think WashTech was definitely instrumental in getting us going, even though it wasn't WashTech that came in initially," said Dahl; the union's presence at Microsoft made people think "hey, we have an option, we don't just have to grumble."[36] Sixteen of the 18 tax analysts signed a petition asking WashTech to represent them.

While the tax analysts were all working on the same project at Microsoft, they were actually employed by four separate temp agencies. Apart from the legal obstacles this posed (more on that in the next section), it meant that the workers had to contend with multiple

[34] *Los Angeles Times*, June 4, 1999.
[35] Ibid.
[36] Squire Dahl, interview by author, Seattle, WA, June 20, 2003.

employers in any formal or informal bargaining. WashTech has always maintained that it is Microsoft that controls the working conditions that contractors care about, not the agencies; and so, while the TaxSaver group sent letters to the agencies and made appointments with agency representatives, they first met with the Microsoft manager in charge of the project. Dahl recounted his response: "He kind of just laughed and said, 'OK, how much is this going to cost me?'... On one hand, we were like, that is kind of a positive response, he's willing to talk to us. But on the other hand it was, we wanted to make it clear to him it's not that we all want 5% more, it's that we want some equity here." In the meantime, Dahl and Barbara Judd had been appointed as the group's leaders and made the rounds to meet with the various agencies. On the whole, remembered Dahl, their appearance and announcement that they wanted to bargain collectively over the conditions of their employment "was just a surprise to all of them, they had never dealt with anything like that before." One agency representative, said Dahl, was simply "flabbergasted" and proceeded to shuffle the duo out the door and call the agency's national headquarters to ask what to do. Another became incredibly hostile and confrontational. A third tried to express understanding for the contractors' situation. But all the agencies within days sent official responses that declared "we do not recognize you as a union."[37]

The formal rebuff from the agencies did not deter the workers, and they continued to press their case. As they did, Microsoft's response grew increasingly threatening. A June 4 article on the organizing effort that ran prominently on the front page of the *Seattle Times's* business section was answered by Microsoft with a captive audience meeting in which the project manager— no laughter this time— was "very, very upset."[38] The *Times* piece called the tax analysts' effort a "small but potentially significant breakthrough for organized labor,"

[37] Ibid.

and added, "It is believed to be the first time software workers in Washington have formed a bargaining unit and sought collective bargaining."[39] The project manager's reaction seemed to confirm the potential significance of campaign. The meeting called by the manager, whose tone Dahl said was "threatening," was a classic anti-union scare tactic, and the tax analyst group did lose some active support. But most of the group stayed committed to their cause, and soon afterwards organized a T-shirt day. According to Dahl, "at least three-quarters of the group wore them, and it was the day we had our team meeting, and so here comes the manager walking in and everyone's got the same [union] T-shirt on." The manager at this meeting was a lower-level manager, the supervisor of the tax analysts, and his response was to get mad not at the workers, but at the agencies. He called a representative from Volt Accounting, the agency that represented over half the temps in the group,

> called her up and was screaming to her on the phone about this, demanded that she do something to make us happier, and was like, 'I'm not going to lose my entire team over this,' and kind of went off on her about all the issues that we had been frustrated about.[40]

Not long afterwards, the tax analysts were called into meetings with the agencies, one at a time, and a series of changes in pay and benefits was outlined to them. No one, of course, ever admitted that it had anything to do with the group's organizing, but most of their concerns were addressed. Salaries were restructured and the pay disparity significantly reduced; everyone received some increase and those with the lowest salaries received the biggest raises. A better health plan was introduced. A 401k plan was started, even including a very small matching contribution from Volt. Vacation benefits were also improved.

The 18 tax analysts in Microsoft's TaxSaver unit had an unusual amount of leverage over the company because of their unique skill set and the imperatives of the software

---

[38] Ibid.
[39] *Seattle Times*, June 4, 1999.

production cycle. At the height of their organizing effort, they were only about six months away from the shipping date for the software. While the release of some other software might be delayable, accounting software, because of the annual tax calendar, is not. The group's dual sets of skills, meanwhile, in both tax law and programming, meant that replacing them would have taken months of training new people in the particular development environment they were working in. In other words, had the tax analysts decided to strike or quit or walk off the job or staged any other variation of a job action, they could have single-handedly kept the product from shipping. "Although Microsoft could easily replace the workers or otherwise crush such an effort," the *Los Angeles Times* reported on the same day the *Seattle Times* story ran, "it would risk delaying the release of an important product and would potentially antagonize an army of 6,000 temps."[41] All this explains the angry phone call from the analysts' supervisor to Volt, and it explains the responsiveness of the agencies to the workers' issues. It also confirmed WashTech's analysis that the agencies responded to Microsoft's direction when it came to setting work conditions.

The TaxSaver story is WashTech's best example of the efficacy of direct organizing. Situations where workers have enough leverage over the company to informally bargain and win workplace improvements are, however, "rare opportunities," as Courtney conceded. Even so, while the TaxSaver analysts achieved the most dramatic results as a consequence of their organizing, they are not the only improvements at Microsoft for which WashTech can take at least partial credit. During the same spring that workers were organizing at TaxSaver, Microsoft implemented several changes in its temp worker policies. It announced that contractors would have agency choice; previously, contractors— who generally had a job interview at Microsoft and were then directed to a temporary agency to sign up as a

---

[40] Ibid.

contractor— were told which agency they had to get their employment through. The new policy allowed contractors to choose among agencies. Microsoft also improved benefits for contractors; more precisely, it instituted a minimum set of benefits that it required agencies to offer employees in order to be able to place workers at Microsoft. The benefit improvements included 13 paid days off a year (sick days, holidays and vacation together), medical and dental coverage with the employer paying half the cost, a 401k plan, and some training opportunities.[42]

These changes came at a time when WashTech had a "very developed network" of activists at Microsoft.[43] Union activists held meetings, met with co-workers one-on-one, and had the capacity to drop leaflets in 15 different buildings on the Redmond campus. The changes also came as Microsoft was continuing to lose ground in its legal battles in *Vizcaino v Microsoft*, aka the "permatemp suit." Started in 1992 by a group of Microsoft contractors, the suit claimed that Microsoft illegally denied contractors the ability to participate in the company's stock option plan; the case hinged on whether contractors were in fact Microsoft employees, and by 1999, the tide of rulings in the case had turned against the company and made it clear that the company would lose its battle to avoid any employer obligation to its contractors. The decision to allow agency choice for contractors and improve benefits was openly described as a response to complaints from temps, and was credited in newspaper accounts in part to WashTech's activism. The combination of the legal pressure from *Vizcaino* and the organizing pressure from WashTech drove this and a number of subsequent changes in Microsoft's contractor policies.

---

[41] *Los Angeles Times*, June 4, 1999.
[42] *Seattle Times*, April 3, 1999.
[43] Courtney, interview.

Giving workers some of what they want is a standard anti-union tactic that employers use to try to thwart an organizing drive, and WashTech leaders felt that both the intent and the effect of Microsoft's changes in 1999 were exactly that. In addition to the improvements it made in working conditions, Microsoft also began reducing its reliance on contract workers in 1999, converting some to full-time positions and enforcing a policy it established the previous year requiring contractors to work for no more than a year before being forced to take a mandatory 31-day break from Microsoft work (the company later expanded the required break period to 100 days). These actions together had the effect of breaking up the WashTech network at the company.

> Microsoft realized, this is like a real serious problem, let's solve it and give in to what they want, we're going to give them healthcare... we're going to change the agency model, we'll have agency choice, we'll give you some kind of healthcare, pretty simple stuff, enough to do that, and then we'll convert a bunch of people... .The organizing strategy that was hammering Microsoft at the same time [as the lawsuit], it was like becoming a massive PR problem for them, and they decided that the best way to solve the PR problem is, best way to solve the union problem is to convert all the contractors to full-time employees, fire the other ones, and mix it enough up that you break up the network. And that's pretty much what they did. It was pretty effective.[44]

Temps who were converted to full-timers generally dropped out, in part because the union initially addressed itself exclusively to temp issues and workers (flyers were put only in the "a-" mailboxes, for instance); and partially because they now felt like part of the Microsoft club. Dahl recalled how one worker who became a blue badge changed. She had been a vocal critic of Microsoft and a supporter of the union; but "as soon as she went over to the other side, you can even see a change in her, and she immediately never talked about that kind of stuff again."[45] Between the conversions and the other tactics, WashTech lost the

[44] Ibid.
[45] Dahl, interview.

momentum it had in those early days and the union has not been able to rebuild an organized network of activists at Microsoft since then.

The union's direct organizing strategy has demonstrated that collective action among IT workers is possible and can effect changes. At the same time, it is clear that the gains won through such informal mechanisms are precarious and easily countered through employer actions. Without more permanent structures and legal standing, even the small amount of power IT workers have in their industry is unstable and contingent. But WashTech has demonstrated that workers do *have* power in their relationships with their employers, both through the skills they contribute, and through their ability to leak embarrassing or damaging information. Stated in relational terms, the latter form of power can be described as workers' withdrawal of their consent to keep information confidential. Both kinds of contributions give workers power in the worker-employer relationship, and WashTech has used demonstrations of that power to further their primary goal of building worker consciousness in the industry. On the one hand, they point to the improvements won through direct organizing as illustrations of why workers can and should work collectively. On the other hand, they try to "dealign" workers and management by discrediting or embarrassing management and thereby suggesting workers' allegiance to management is not in their interests.

The union's focus on building worker consciousness reflects the understanding that whatever else it takes to organize successfully, collective action— and therefore a collective actor, a collective identity— is a prerequisite. The power of example, of the visibility of the union's efforts, is clear from the TaxSaver workers' experience. It was WashTech's presence in their workplace that gave them the nudge to translate their dissatisfaction into organized action. On the other hand, it seems equally clear that the effect of such examples of

collective action was short-lived and not lasting. The ability of Microsoft to break up the union's network suggests that what consciousness the union has raised is as unstable and contingent as their power in the workplace.

Nevertheless, WashTech has made something out of almost nothing, in part through a lot of good, hard organizing. With regard to that, the union's relationship with the labor movement, initially through the KCLC and later CWA, was tremendously valuable. While the labor movement may have been institutionally unprepared to organize in the IT sector, the commitment and skill of individual organizers like Rosenblum and de Majewski brought organizing expertise and guidance to the new union. Moreover, the labor council's material support, providing office space, staff time and a dedicated intern, was also critical to getting the union off the ground.

"You've got to check your prejudices at the door," said Rosenblum about organizers' early meetings with the Microsoft contractors, "it was like, this is a very different sort of thing, this is not about elections, this is not about bargaining; this is about workers and it's about power, it's absolutely a union."[46] But a union that would look nothing like a traditional union. The form WashTech did take had to do with the structure of the industry and its workforce and the virtually complete absence of unionized workplaces and worker consciousness from the industry. Intertwined with these factors was the impossibility, under current labor law, of establishing collective bargaining with Microsoft and other IT employers dependent on contingent labor. WashTech simply *could not* be 'about elections, about bargaining,' because these options were largely foreclosed.

[46] Rosenblum, interview.

IV. Legal constraints and political possibilities: "Who cares about the NLRB?"

As in Florida's nursing home industry and Las Vegas's casino industry, the NRLB and the apparatus of labor law impede union organizing for Seattle's IT workers, rather than facilitating it, as the law was originally intended to do. Also as in the SEIU and HERE cases discussed in the previous two chapters, the political arena has emerged as indispensable turf on which WashTech needs to be in engaged in order to build power for workers in the industry. As in the other cases, politics is a way to offset the negative effect of one set of state actors by involving other sets of state actors. But although these general parallels hold, the Seattle case is different in a number of ways. For contract workers in the IT industry, NLRB procedures are not just a set of rules that stack the deck in employers' favor; they make collective bargaining virtually impossible. Meanwhile, the high-tech industry remains largely unregulated, which deprives the union of ready-made opportunities (like the state funding of nursing homes or the county licensing of casinos) to leverage its political relationships against the industry. Legislative activism is nonetheless very important to WashTech for several reasons. For one thing, to be blunt, they don't have much else; however they build power in the industry, given the legal obstacles, it's likely that political leverage will play a critical role. More immediately, WashTech has found in every survey it's ever done and through meetings and individual contacts that workers feel the need for a collective voice in legislative matters. Being active in state politics thus raises the union's profile in a way that it's most likely to be sympathetically received among its potential membership. Involvement in politics also plays to WashTech's one structural strength: its association with the city's and state's labor movements, which are relatively strong and influential.

The National Labor Relations Act was designed to provide a means for workers to establish collective bargaining relationships with their employers. But the definitions of "employees" and "employers," which were self-evident in the labor market of the 1930s, are no longer fixed or uncontested, and the evolution of labor law since then has largely worked to put certain workplaces beyond the reach of the NLRA. In particular, NLRB precedents prior to the 2000 ruling in *M.B. Sturgis/Jeffboat Division* made organizing temp workers virtually impossible, and even with the *Sturgis* ruling significant obstacles remain. A 1973 NLRB decision, *Greenhoot, Inc.*, held that workers from a single agency working at multiple user employers could not form a bargaining unit; the situation was deemed a "multi-employer" unit that required the consent of all the user employers. In *Lee Hospital* (1990) the board ruled that contract workers could not form a bargaining unit together with full-time workers at their user employer; again, as a multi-employer situation, the board required the consent of both the agency employer and the user employer.[47]

The requirement for consent effectively prohibits unionization, since it literally bestows the decision on whether workers are allowed to organize on their employers. Of course, the same may be said for card check recognitions and other 'voluntary' recognition agreements. Technically, they rely on employers' willingness to accept the union; in practice, they rely most often on other pressure the union puts on the employer in the absence of the pressure of legal requirements. Theoretically, WashTech could apply a similar organizing model to these situations that require employer consent. As this account makes clear, however, the Seattle union has none of the leverage opportunities that could give it enough power to force such 'consent' out of employers. Thus *under the conditions that currently obtain* in the IT industry, these legal obstacles effectively foreclose the ability of the union to

[47] Nancy Schiffer, "Organizing Contingent Workers post-*Sturgis*," Building and Construction

collectively bargain. The pre-*Sturgis* precedents were still in effect when WashTech began, and it was crystal clear to the union that whatever building a union meant, it could not include collective bargaining for the foreseeable future. "In the industry, collective bargaining is not an attainable goal right now," Courtney told *In These Times* in 2000. "That's not going to preclude us from organizing and building power for workers on the job... .If we play by the rules, we'll never win."[48]

The *Sturgis* decision limited *Greenhoot* and overruled *Lee Hospital.* Employer consent is no longer required for a bargaining unit that combines contract workers and full-time workers at a single user employer.[49] This would seem to remove a major legal hurdle for Microsoft and other permatemps. However, *Sturgis* is silent on the question of whether the board would consider full-time workers and contract workers from *multiple* agencies an acceptable bargaining unit. Without that, WashTech members would be just as hampered in their ability to build an effective collective bargaining unit at Microsoft as under *Lee Hospital* because of the software giant's reliance on multiple agencies. Moreover, even with the liberalization of what the board will consider as an appropriate bargaining unit, it continues to apply a "community of interests" standard in determining whether a group petitioning for an election will be accepted as a bargaining unit. This gives employers the opportunity to argue that temp workers and permanent workers do not form such a "community," thereby achieving by different means the same end as the pre-*Sturgis* board decisions. Beyond the narrow question of mixing contractors and full-time employees in a bargaining unit, the community of interests standard also offers employers like Microsoft— with so many different kinds of jobs, from testers to writers to developers, so many different units and

---

Trades Department, AFL-CIO Attorneys' Conference (May 14-15, 2001), 3-4.
[48] Quoted in Moberg.
[49] Schiffer, 4-5.

product lines, not to mention so many lawyers to litigate the question— ample opportunity to try to prevent large bargaining units that could actually have meaningful leverage over the company.[50]

Thus the relief *Sturgis* offered workers in the IT industry from legal obstacles to collective bargaining were, in the end, minimal. For WashTech, attempting to establish collective bargaining relationships would have the additional hurdle that "nobody understood the process," as Courtney put it. "It's like a legalistic process that makes no sense to workers." It is hard enough to build worker consciousness in the industry, let alone then trying to translate it through the Byzantine obstacle course of labor law. Courtney illustrated the point:

> this whole thing of like the process: you have to be an employee; well, we weren't employees, or maybe we were employees and there was a lawsuit that said we were employees... .Nobody knew if we even had employee status. The second thing is you had to organize with an employer; well the whole problem there was there was 50 different temp agencies that Microsoft employed. There wasn't even one employer of a temp agency; there were multiple employers through the non-employer who Microsoft said was the employer when Microsoft was the real employer. So even right off the bat of like employee status, employer status, bargaining unit status, and the process by which to organize, to leverage power to change the issues seemed like it just didn't resonate, this is not going to be an effective way to do anything.[51]

Add to all that the fact that worker mobility in the high-tech sector makes employer-based union structures both more difficult to achieve (having to constantly organize new workers at the worksite) and less helpful to workers (who lose their rights and benefits once

---

[50] The TaxSaver experience suggests that wall-to-wall bargaining units are not the only ones that can leverage meaningful power against a company; that strategically located groups of small workers can in fact exercise power. I think that is true, and in situations like WashTech's deserves to be more fully explored by the union. At the same time, I think the TaxSaver analysts' advantage over Microsoft was time-bound and would be seriously eroded over any longer period of time. Within an annual product cycle, the TaxSaver workers' skills gave them leverage over the company because they could not be easily replaced, but a company committed to resisting this advantage could certainly recruit and train replacements on a longer time horizon. In the end, for all the reasons that union density matters, I think union power in a company like Microsoft requires a substantial union presence.

[51] Courtney, interview.

they leave a particular job). Capital mobility, meanwhile, also makes employer-based unions easier to evade. Employers can simply shutter their doors at one facility or company and open elsewhere, or under a different name, union-free. Unions in light industry sectors like garment and apparel have dealt with this problem for over a century, but the erasure of geographic constraints resulting from Internet technologies has made the IT sector even more mobile. "The traditional model of coming in too work every day at a specific employer and linking up with your co-workers isn't sufficent," said de Majewski.[52] Rosenblum was even more blunt; "frankly it doesn't fit the industry," he said.[53] The organization of building trades unions is a possible alternative model that WashTech leaders have consciously explored from the beginning. "We'd be shooting ourselves in the foot," de Majewski explain,

> if we fought forever to get NLRB-style recognition at one specific workplace because it would disappear, and it would reform as some other organization that we didn't have a relationship with, so we need to build members for life in the industry. More like a sort of building trades model: You get your training, and you get your information, and you get your health and safety information and all that stuff out of your union, and your employers come and go.[54]

Rosenblum, too, said the eventual model that emerges from WashTech's experimentation will likely "look closer to, interestingly enough, the building trades model 100 years ago than what people see of the traditional modern-day collective bargaining relationship." The crux of that model is the capacity to set "certain standards in the market regardless of who the employer happens to be."[55] Yet the building trades experience, while offering at least a partial model, isn't transferable either, certainly not in the short run. For one thing, the legal statutes governing the trades' labor relations are tailored specifically to that industry.[56] For

---

[52] de Majewski, interview.
[53] Rosenblum, interview.
[54] de Majewski, interview.
[55] Rosenblum, interview.
[56] de Majewski, interview.

another, the trades model depends on controlling the labor supply, and WashTech is far, far from representing enough of the industry's workforce to do that.

IT workers do not experience the structure of the industry's workforce as an impediment to union organizing, though it certainly is that; many of the contractors in the industry do, however, experience it as a *scam* that allows employers to evade responsibility to their workers.[57] This is most pronounced a Microsoft, where most contractors are interviewed by Microsoft, and then sent to an agency to be hired through it (as noted above, contractors are now given a choice of agencies). Until WashTech started organizing, the agencies were seen as universally unresponsive to their workers. Workers resented their mark-up, the difference between what the workers were paid and what the agencies charged the company, and saw the agencies as simply making money off them without offering them any sort of service or representation. Meanwhile, the agencies are not genuinely independent of Microsoft; some of them depend on Microsoft for virtually all of their business and WashTech organizers have long maintained that it is Microsoft that controls the work conditions that workers care about; either directly on such issues as hours, or indirectly on issues of wages and benefits. "Microsoft is really the puppet master... and the agencies dance to Microsoft's song because they want the work. Microsoft's the only game in town for a lot of the stuff they work on," said Blain.[58] Courtney had an entertaining analogy for the relationship between Microsoft and the temp agencies:

> Microsoft is like the Soviet Union, and then they have this bloc, and the Eastern bloc are all their temp agencies. Basically, they get a call from the Kremlin, and it says, 'OK, what you need to do it tell those temp workers this,' and then the Eastern bloc then goes and does that.[59]

---

[57] The word "scam" comes up again and again in conversations and interviews with contractors . In a typical example, Courtney told me, "I was out at Microsoft for about nine or 10 months and I was realizing the scam being a contractor was really starting to be, so I basically got radicalized."
[58] Blain, interview.
[59] Courtney, interview.

The union's experience at TaxSaver bears these observations out. Workers won improvements in their situation, nominally from their agencies, only after their Microsoft manager weighed in on the matter. And Microsoft's April 1999 decision to set a minimum package of benefits for its agency contractors appears tantamount to an admission that it controls contractors' work conditions. Yet Microsoft responds to virtually every inquiry or complaint from contract workers by telling them 'we're not your employer; talk to your agency.' The legal fiction that the workers are not employed by Microsoft also insulates the company from union organizing. That, too, was on display in the TaxSaver case, where the agencies' refusal to recognize the union simply ended the matter from a legal point of view; they did not consent, and that was that. In an early memo summarizing the structure of the industry and the start of WashTech, Rosenblum and de Majewski put it thus:

> The temporary labor scam is particularly evident in high tech: Companies contract with temporary agencies, who merely serve as payroll agencies that protect the true employers from their responsibilities and liabilities. The scam also makes it nearly impossible for workers to organize under existing labor laws.[60]

All this, as already noted, puts organizing through NLRB elections (as difficult as that is) beyond the reach of WashTech. Interestingly, given its keen awareness of the law as an ally of employers' quest for union-free workplaces, WashTech does not exclude the possibility of pursuing NLRB elections in some situations. In this regard, it has something in common with SEIU Local 1199FL and in contrast with HERE Local 226: Like the Florida nursing home union, WashTech certainly does not have the kind of leverage it would need to win recognition agreements from employers; unlike the Vegas casino workers' union, it does not see the NLRB process as so worker-hostile that it will not, on principle, consider NLRB elections. In a few small cases and in one larger one, WashTech has indeed sought to

[60] Memo from Jonathan Rosenblum and Andrea de Majewski to Deborah Dion, May 11, 1998.

represent workers through NLRB election procedures. The one significant case was WashTech's organizing drive among the customer service representatives at Amazon.com.

Amazon, like Microsoft, is considered one the flagship companies of the so-called "new economy." WashTech leaders know that unless they can organize the leading companies in the IT industry, they cannot build real power in relation to the employers. The chance to organize the 400 customer service representatives in Seattle, even though it was only one of several customer service centers and the centers themselves only one part of the overall company, thus presented an important opportunity for the union. From the beginning, WashTech followed developments at Amazon and regularly posted news stories about the e-retailer on its website. While the public organizing drive did not begin until the fall of 2000, WashTech's first contacts from Amazon workers came in November 1998. Wilson, who was the union's point person on Amazon, followed up with meetings with a handful of workers, but the effort petered out. In early 1999, there were further contacts from Amazon workers, complaining of unheated buildings, overwork, favoritism and other very traditional (old economy) concerns. Wilson again met with interested workers, and this time the effort led to a survey of Amazon workers; WashTech had found surveys to be a useful organizing tool at Microsoft. The survey, which was web-based, drew a response rate of up to 20% of the customer service reps. It also drew management opposition, vicious and vulgar anti-union responses, and threats of violence. The hostility, which Wilson says shocked her and others, "really put the brakes on the organizing at that point. It really terrified a lot of people."[61]

But in the fall of 2000, Amazon workers were once again trying to organize. Like the TaxSaver workers, they started organizing on their own, and then reached out to WashTech.

---

[61] Wilson, interview.

The group called itself Day 2, a reference to Amazon CEO Jeffrey Bezos's oft-repeated mantra that it was still day one at the young company. It grew quickly, and in mid-November Day 2/WashTech went public with its effort. The timing on public announcement of the union drive— which garnered headlines from major news outlets across the country because it was seen as a key test of labor's ability to break into the IT sector— was determined by a complicating factor, namely that another group, the Prewitt Organizing Fund, was going public with its effort to organize Amazon warehouse workers. WashTech worried that customer service workers would be confused about who was asking them to join the union unless it came out publicly at that point. The company's response was swift and brutal. It called an "all hands" meeting (in other words, a captive audience meeting) the following day, explaining to workers how the union would bring rigidity to Amazon, how it could force workers out and strike and how it was only interested in workers' dues money.[62] It was the same arguments employers everywhere use in the fight against unions. Amazon also set up an internal website for supervisors, instructing them how to counter the union drive, what they could and could not say, and how to watch for warning signs that workers were talking about the union (such as "small group huddles breaking up in silence on the approach of the supervisor"). The material found its way into the pages of the *New York Times*.[63]

On January 30, 2001, Amazon announced that it was laying off 1,300 workers, including 850 in Seattle and the entire Seattle call center. The Seattle call center work was transferred to India. The company offered to pay moving costs for any of the workers that wanted to relocate to North Dakota or West Virginia, where the company's other U.S. call centers were located. It cited the high cost of wages and real estate in Seattle as the reasons it

---

[62] Jonathan Cohn, "The Jungle: Amazon.com and the Return of the Old Economy," *The New Republic Online* (February 19, 2001, http://www.thenewrepublic.com/021901/cohn021901_print.html, viewed February 20, 2001).

chose to close that call center. There was loud and public speculation, covered in the media, by WashTech leaders and members that the company's layoffs were really a union avoidance move. In the end, less publicly, the union felt that the layoffs probably were a genuine business decision and not primarily a union-busting tactic and while they debated filing an unfair labor practices charge (ULP) on the matter, they eventually decided not to. Even if Amazon's decision to move the call center work to India was not wholly or primarily motivated by a desire to shut down the union drive, the move nonetheless underscored the difficulty of employer-based unionism in a mobile industry.[64]

The layoffs ended the formal union drive at Amazon, but in classic WashTech fashion, they did not end the organizing. The company offered the laid-off workers a severance package, but it was contingent on them signing a non-disparagement clause that prohibited them from making derogatory comments about the company. The union quickly slammed the company as a free-speech enemy and mobilized against what they termed a gag order. The company backed off, saying "we realized we made a mistake."[65] WashTech also made further demands around the severance package, including an extension of the deadline by which workers had to sign the separation agreement, which they also won.[66] "When it comes down to it," said Wilson, "everyone in customer service got the best package."[67] Thus despite the layoffs and the defeat of the union drive, workers at Amazon still felt like they had the power, collectively, to advocate for and win changes in their work conditions. "We

---

[63] *Seattle Times*, November 29, 2000; Cohn.
[64] Trade unionists in manufacturing industries, of course, are painfully familiar with the problem of plant closings. The have one advantage vis-à-vis their high-tech brethren, though, which is that at the time offshoring of manufacturing jobs began unions had a sizable presence in those industries, which gave them some negotiating power to slow down (though ultimately no more than that) the rate of job loss; the IT sector has no such brakes on it as it moves ever more work to lower-wage countries.
[65] *Seattle Times*, February 2, 2001.
[66] *Seattle Times*, February 9, 2001.
[67] Wilson, interview.

did get a great, comparatively great severance package for people, that everybody pretty much acknowledged was due to the organizing," said de Majewski.

> Even the people who were on the no committee...by the time the layoffs happened, they were all coming up to the committee people and saying, 'we were wrong, we should have joined you, look at the severance package we got, you guys were totally right.' It was a victory, but it didn't really further WashTech's organizational goals.[68]

It is perhaps a testament to how little union awareness and presence there is in the IT industry that several of WashTech's leaders spoke so positively about the Amazon campaign. By traditional union measures, the drive at Amazon was a resounding defeat: Workers not only failed to win union rights, they were all laid off as well. (Courtney alone offered a more pessimistic take on the experience, and even he prefaced it by saying it was a "great campaign": "It was a classic, typical union campaign, where like pickets charge, everybody gets mowed down, and then, OK, we're done."[69]) To focus on the improvements won in the subsequent severance package may seem like a strained attempt to see a glass that's nine-tenths empty as one-tenth full instead. Yet to the extent that the IT union glass had been completely empty when WashTech started organizing, union leaders are right to count their modest achievements at Amazon as significant steps towards their goal of building worker consciousness and organization in the industry. At any rate, the union's attempt at an NLRB campaign at Amazon was the result of a rare structural condition: the customer service representatives were all full-time permanent employees. There were no contractors involved, and thus no debatable questions of what constituted an employee, an employer or a bargaining unit that did not require the blessing of the employer(s).

Elsewhere, WashTech simply hasn't had this option. From the earliest days, however, organizers felt that that they had to do *something*, and do it *now* rather than wait for

---

[68] de Majewski, interview.
[69] Courtney, interview.

an opportunity to work within the law. "We still believe to this day that NLRB campaigns are a possibility," said de Majewski,

> We got really close with Amazon to pulling one off. So that's never been thrown out the window. But we thought that we had to build the organization to establish sort of credibility in the industry to pull off an NLRB campaign. We couldn't wait around in like contact mode until an NLRB campaign was put in our lap. We wanted to build an organization so people could establish some sort of a structure and a history of an organization that would exist to parlay any potential NLRB campaign into reality... .We never decided we weren't going to do that, we just decided to build an organization in the meantime.[70]

Blain took this line of thinking one step further:

> I kept making parallels at the time [when WashTech started] to the auto factories in the 30s. They didn't look at the law and say, 'OK, this is what's OK, this is what's not OK, this is what they say we can do and what we can't do, and this is how we have to do it.' They just organized; across the board, wall-to-wall massive organizing. They dealt with contracts and legal issues and changed the law later. They build the majorities first, and they won. And so we were saying... the auto industry was the high-tech industry of its time... people that were assembling these cars were doing things that were analogous to somebody who's testing software on a CD. So who cares what the NLRB says? Who cares they play this shell game about who the employer is? We should still, we should organize, just, period.[71]

The decision to 'just organize,' borne of necessity, has its liberating side. (Then again, as the song says, "freedom's just another word for nothing left to lose.") It means, noted Rosenblum, "you have a blank slate to begin with and you have an opportunity to be infinitely creative if you just focus on building workers' power, and if you're not limited by any particular model of trade unionism."[72] WashTech has gone about the work of building workers' power by making its primary goal one of increasing worker consciousness in the industry and, as part of that, finding ways to demonstrate that collective action achieves results that individual action cannot. Its strategy of direct organizing is the result of that goal being pursued in an environment where NLRB organizing is largely foreclosed.

---

[70] de Majewski, interview.
[71] Blain, interview.
[72] Rosenblum, interview.

While the mechanisms of labor law bar WashTech from winning legal recognition or collective bargaining rights, a variety of other judicial and legislative processes have offered the union an arena in which to engage the industry (particularly Microsoft) and press its point about the need for collective action. The legal battles of the Microsoft permatemp lawsuit were useful to WashTech in a number of ways. First of all, the suit bolstered the union's assertion that contractors were in fact employees of Microsoft. Courts ruled in 1997 and on appeal in 1998 that permatemps were "common law employees" of Microsoft and had the right to participate in the company's stock option plan.[73] Further rulings expanded the number of contractors eligible in the suit. Second, the suit demonstrated that the IT giant could be taken on, and taken on successfully. During the union's first years, ruling after ruling in the case went against Microsoft. Late in 2000, the company finally agreed to settle the case for $97 million.[74] The class action suit was in that way an example WashTech used to make its case that workers could force the company to change if they united. Furthermore, the permatemp suit— and the many years over which it stretched— kept a steady stream of negative publicity in the public eye, and gave union leaders a chance to bash the company and reiterate their view that Microsoft's employment practices amounted to an anti-worker scam. A sampling of headlines in the case illustrates the point: "Angry judge tells Microsoft to redo 'temp' contracts," "Another court victory for Microsoft temps," "Temp Worker Blow for MS."[75] Lastly, by writing and distributing its own news stories on the case, WashTech was able to use *Vizcaino v. Microsoft* to help cement its reputation as a reliable and valuable source of information and analysis for IT workers.

---

[73] *WashTech News*, July 17, 1998 (http://www.washtech.org, viewed June 16, 2003).
[74] *Seattle Post-Intelligencer*, December 12, 2000.
[75] *Seattle Times*, January 14, 1999; *Seattle Times*, June 25, 1999; http://www.ABCNEWS.com, January 10, 2000 (viewed June 16, 2003).

The legislative arena has also been an important one for WashTech, and the state's Department of Labor and Industries has been instrumental to the union as well. It was, of course, the L&I rule change on overtime pay that helped launch the union; the state's pro-employer action in this case became an organizing tool for workers. L&I played a directly positive role for the union two years later when it issued its ruling on Microsoft's obligation to show contractors their personnel files. That ruling came in response to a request from WashTech that the state agency issue an opinion on the matter. As noted in the previous section, the union kept the matter alive when it helped introduce and testified for legislation that would guarantee contractors access to the files. While the ruling was simply ignored by Microsoft and the legislation did not pass, the union's political efforts on the issue gave it repeated opportunities to make some of its fundamental points: that Microsoft really was the employer, that Microsoft lied to workers, that collective action was possible and (at least somewhat) effective.

The primary value for the union of political action in this case was not the *result* of its engagement, but the side effects of it. This has been true for most of WashTech's legislative efforts. Most of them have not yielded actual passage of legislation, but they have helped the union repeat its themes and reach its primary audience, the tech worker labor force, as well as a broader public audience. In addition to the personnel files legislation, the union has pushed for legislation that would force temp agencies to disclose their mark-up fees, a bill that would close loopholes in the federal Worker Adjustment and Retraining Notification Act (WARN Act, which mandates notification of plant closings to workers), and one that would sponsor a statewide study of contingent work. None of them have passed, but all of them have responded to issues that WashTech surveys and organizing revealed were important to IT workers; and more fundamentally, responded to workers' desire to have an

organized voice in politics. On the federal level, WashTech succeeded in August 2003, after an extensive e-mail campaign, in getting the General Accounting Office to conduct a study of the offshoring of IT jobs (more on this in the next section). Political action, said Courtney, "gives us an opportunity to talk about an agenda. Workers don't want to join anything if they don't think there's an agenda there."[76]

WashTech's presence in state politics belies its small numbers, and its profile on IT legislative matters is out of proportion to its size. "The very fact that we're even down in Olympia, sponsoring legislation, that's like a victory in and of itself," said Courtney.[77] A primary reason for the union's high political profile is its association with the city and state labor movements. Union density in Washington was 18.4% in 2002 and labor is a significant player in state politics.[78] The state labor council's embrace of WashTech and concrete support for the union's political goals have been very valuable. The state fed has offered the help of their lobbyists to WashTech; its relationships in Olympia have opened doors for WashTech, allowing them to get hearings on bills and to get bills passed out of committee.

It bears repeating, however, that the union has not actually succeeded in passing any state legislation. One reason for this is that despite the help from the state fed, WashTech is still a small union and its ability to influence legislators limited. Another reason, crucial to the understanding of the structure of power relations in the industry, is that the IT sector in general and Microsoft in particular are a much stronger political force in Washington state. High-tech interests dominate the legislature, not as completely as gaming interests dominate in Nevada, but then again, neither does WashTech constitute a serious counter-weight the way the Culinary Union does in Nevada. "Microsoft and the rest of the industry is a *huge*

[76] Courtney, interview.
[77] Ibid.

player in state politics. They are the future of the state's economy, because Boeing's taking off and agriculture's all screwed up, so everybody's peeing in their pants to help high-tech succeed in the state," said de Majewski.[79]

In WashTech's case, even more than in Culinary's and 1199FL's, labor law makes the state the *de facto* ally of employers. While there are occasional opportunities where the employment structure allows for NLRB campaigns (where winning union recognition becomes merely extremely difficult rather than impossible), such as in the Amazon call center case, the heart of the industry simply cannot be organized under existing laws, and thus the union cannot win real power or drive industry standards through NLRB organizing. In the long run, WashTech is aiming to establish collective bargaining relationships because the gains of direct organizing are too tenuous and too easily lost or reversed without the power of legally binding contracts. But the union's strategy is driven by the need to look elsewhere, to other relationships, in order to build power. Its relationship with the state legislature and other political actors is one crucial component of this search for alternative relationships. Here, WashTech's relationship with the state labor movement is the one structural bright spot for the union's efforts to find leverage points against IT employers; that relationship is valuable because of the state labor movement's relationships with state politicians. Thus far, this configuration of political relationships has not yielded any legislative or regulatory victories for the union that would give it increased leverage over employers. One important reason is that while labor has political muscle in Olympia, Microsoft and other IT firms have far more of it. But legislative activism has been valuable to WashTech nonetheless, primarily as a tool for increasing the union's visibility and as an

---

[78] Bureau of Labor Statistics, "Union members in 2002," ftp://ftp.bls.gov/pub/news.release/union2.txt (viewed September 4, 2003).
[79] de Majewski, interview.

organizing tool, underscoring once more WashTech's primary focus on building consciousness and organizational capacity among IT workers. The union's biggest organizing tool, however, has been its skillful employment of the very technologies that gave rise to the IT industry.

V. Using old and new media: "We shifted the frame of reference"

From the very beginning, WashTech has used Internet technologies to further its goals. This is not surprising from a union of techies, but the success they've had is striking even so. Critical to that success is not just that WashTech leaders and activists are Internet-literate and know how to use the new media, but also that *all* of its potential members have Internet access. For other unions, Internet-based communications and campaigns are a valuable tool, but they can never replace other organizing tools because significant minorities of their members or potential members are not on-line. While no form of mass communication (postal mail, e-mail, flyers, etc.) replaces face-to-face organizing and the need to work one-on-one to build organization, the fully wired nature of the IT world does allow WashTech to dispense almost entirely with paper communications. The union thus reaps the advantages of the Internet to a maximum degree. In particular, web- and e-mail-based communications allow them to distribute material without regard to scale, because the cost of sending one e-mail or one million is virtually identical. The medium also allows for incredibly fast distribution and responses. And, it offers the union a way to communicate with workers without having to filter their message through the corporate media. In the IT environment, the reliance on Internet technology allows WashTech to escape several of the constraints that scarce resources usually impose on unions. Combined with savvy use of

traditional media, this has given them a potent tool to pursue their goal of building consciousness among industry workers.

"The *Seattle Times* did a story on us, in April of that year [1998]," recalled Blain about the very early days of WashTech's formal existence,

> It was on the cover of the *Times*, below the fold, but still it was on the cover, about temps at Micorsoft organizing or something. And they said we had a website, which we didn't, so we— I created one that weekend. Just threw this thing up there.[80]

Starting from that initial hasty web presence, the union has designed a deliberate strategy of making itself a credible source for IT industry news. Blain had a background in journalism, which helped him "just crank the stuff out," as Courtney put it.[81] Along with the immediacy of Internet communications, that helped give WashTech the capacity to respond to industry developments and get those responses out to thousands of people in less than 24 hours. Blain also made a point of quoting workers and bringing worker voices into the stories that *WashTech News* ran, something he noted was missing from corporate media coverage. "Microsoft and some of these agencies... just thought they could do whatever they want and there would be no consequences at all," said Blain,

> They could shit on people, they could blacklist you, they could lie to you, they could deceive you, they could betray you, and they felt that nobody would ever know. And we shifted the whole frame of reference at Microsoft, where within months we made it so that every major agency out there knew that if they were going to screw people systematically, we would find out about it, and we would write about it, and we would talk to the press about it, and we would put stuff on our website about it. And they could threaten us with lawsuits, and the more that they went after us, the more PR we would get and the more the whole situation would become publicized. And that is exactly what happened.[82]

WashTech's ability to "find out about it" is based on its close contacts with workers in the industry. As discussed earlier, workers' leaks of damaging information have given the

---

[80] Blain, interview.
[81] Courtney, interview.
[82] Blain, interview.

union numerous opportunities to discredit Microsoft and score a news scoop at the same time. *WashTech News* functions to amplify the bad PR that these leaks have created. It is also worth noting that the stories that run in *WashTech News* are more than glorified press releases, which is too often the state of labor journalism. They cover issues in depth, quote industry and government sources as well as union sources, and provide accurate, factual information. This makes WashTech's website and its listserv of interest not just to workers who already support the union, but to other IT workers as well. It also makes the union's website a reliable and easy resource for other journalists, and thus helps drive the union's corporate media presence, which is considerable. Corporate media articles about the union or issues of concern to IT workers, in turn, are linked from the WashTech website (and are searchable there, meaning if someone wants to research a subject, they can use the WashTech site to find both WashTech's coverage and others' at the same time), creating further amplification.

WashTech's most successful campaign, the outsourcing campaign it launched in January 2003, integrated the use of leaked information, multiple Internet tools, traditional press work and a political action component. It thus combined all of the union's most successful tactics, and the results were impressive. It began with the Power Point presentation on Microsoft's Indian outsourcing plan. As discussed earlier, rather than releasing the information immediately, the union decided to maximize the mileage it could get out of it by carefully planning a campaign around its release. They spent months preparing a feature series for *WashTech News*, researching the outsourcing and offshoring trend, interviewing members, taking photos and writing articles. They prepared an "action " component for the campaign and set it up using a web tool called "get active." The action was a call for a GAO study of the impact of offshoring on the IT industry. Union leaders

made a deliberate decision to call for a study— which they full well realized would have no meaningful effect on job shifting or the loss of jobs— because they knew that a call for a specific remedy, such as restrictions on outsourcing government contracts (which has been proposed in several state legislatures) or reforms in the H-1B or L-1 visa systems, would be more controversial in Congress and among the IT workforce. "We intentionally did that, called for a study rather than have something in support of a specific piece of legislation... because we wanted to have it be as broad-based as possible so that people could say, 'well, sure, a study, what can that hurt?'"[83] That strategic decision paid off when, as noted, the GAO agreed in August 2003 to do the study. The "get active" tool, meanwhile, enabled anyone to send a message to their Congressional representative through WashTech's website, and also harvested the e-mail address of anyone who did so.

WashTech prepared all these pieces of the campaign in advance, along with one other component, outside press coverage, and then they timed the launching of the campaign to the public release of the PowerPoint presentation leak. The union spent months in negotiations with *Business Week*, granting the magazine an exclusive on the PowerPoint leak, which it included in a front-page story on white-collar outsourcing. The union's scoop ended up as only eight lines in the nine-page article, but that mattered far less than the fact that the union had hitched its story to a larger phenomenon that was the object of big national magazine story and considerable other media coverage. The February 3, 2003, *Business Week* cover asked, "Is your job next?" Underneath the huge headline, it said, "A new round of globalization is sending upscale jobs offshore. They include chip design, engineering, basic research— even financial analysis. Can America lose these jobs and still prosper?" Inside, the story quoted Microsoft vice president Brian Valentine as urging

[83] Ibid.

managers to "pick something to move offshore today," and promoting offshoring as "two heads for the price of one."[84]

The *Business Week* exclusive gave WashTech a vehicle with which to launch their campaign, guaranteeing a far wider distribution of their message than they could ever generate with their own media. "Basically what happened," said Courtney,

> was Business Week launches a cover story issue on white-collar globalization, the *next* day WashTech launches its ground assault, and its web campaign around the same issue. 'Take action, GAO study.' We were protesting at Microsoft that day, that morning, handing out flyers, 'Microsoft sending jobs to India.'... Then blitzing with a press release about the internal presentation... it shut down Microsoft's press operation for seven hours.

The coordination of these various pieces of the campaign had an enormous magnifying effect. "That thing totally positioned us," Courtney said. The union's prepared stories gave news outlets anecdotes and human interest angles on the story, as well as background information on the outsourcing trend. WashTech filmed its Microsoft demonstration so that it could provide b-roll footage to broadcast media— and ended up on CNN as a result. The carefully prepared campaign paid off "beyond our wildest expectations. All of a sudden the CWA is positioned nationally as the leading union fighting the offshoring of IT jobs, driven by the WashTech local."[85]

In addition to being annointed by the media as the national experts on IT offshoring, WashTech increased the size of its mailing list by more than 600% in the process, and generated thousands of e-mails to Congress, demonstrating that it could marshal political resources. The call for the GAO study produced 9,000 constituent e-mails. In May a second "get active" campaign targeting Congressman Jay Enslee for comments he made assuring Indian government officials that anti-offshoring measures would go nowhere resulted in

---

[84] Pete Engardio, Aaron Bernstein and Manjeet Kripalani, "Is your job next?" *Business Week*, February 3, 2003, 52-53.

1,500 constituent e-mails to the Washington state representative. By July, Enslee was writing the GAO inspector general in support of the call for a study.

Also in July 2003, WashTech threw fuel on the media outsourcing fire by revealing Microsoft plans to ship thousands of jobs overseas— blue badge jobs. Once again relying on inside sources, *WashTech News* reported conversations, e-mails and a conference call which disclosed company plans to shutter facilities in Texas and North Carolina. It was the first time that full-time Microsoft workers spoke on the record to *WashTech News*, and the information they provided contradicted the company's oft-repeated claim that outsourcing was not replacing U.S. jobs in the company. The contacts that provided this latest leak were developed from the follow-up work the union did on the thousands of new subscribers it gained through the outsourcing campaign. Thus the union's earlier success with that campaign created new resources (i.e., subscribers who were potentially sources of confidential information) and enabled the union to build on that success.

WashTech has benefited enormously from its savvy use of both traditional and new media. Because the IT workforce is 100% on-line, the union has been able to reap the full benefits of Internet communications, realizing both scale and speed that its limited resources would otherwise prohibit. Moreover, Internet technologies have helped WashTech build organization, through e-mail harvesting and e-mail merge programs. In addition to organizational capacity, the Net has also enabled the union to build political capacity, using web tools like "get active" to generate constituent pressure on Congress, again erasing some of the usual resource constraints organizers face when mobilizing for political action. Meanwhile, WashTech's relationship with traditional media have amplified these results of its Internet strategies. Its significant media presence both locally and nationally is an

---

[85] Courtney, interview.

important tool in its efforts to build both power vis-à-vis employers in the industry, and most critically, worker consciousness among IT workers. For all that WashTech's sophisticated use of old and new media has dramatically built its mailing list and public profile, however, it does not seem to have moved the union much closer to either of these central goals.

VI. Conclusion

As in both HERE Local 226's and SEIU Local 1199FL's cases, CWA Local 37083 has activated a web of interdependent relationships with a multi-faceted strategy to build a presence in the high-tech industry. Its biggest successes have come from a coordinated combination of all of its available leverage sources. The 2003 outsourcing campaign is best example of this, and is by far the union's most successful campaign to date. WashTech began by exploiting a vulnerability in the worker-employer relationship at Microsoft, namely workers' ability to leak confidential information, and then using capacity-enhancing Internet tools they built a campaign that drew on media relationships and political relationships.

Having increased its mailing list by more than 10,000 names as a result of the outsourcing campaign, the union was following up almost 1,000 contacts a week during the summer of 2003. Again relying on Internet technologies without which such a task would be impossible, WashTech systematically reached out to every new person on its list, helped launch a parallel national tech union web presence (techsunite.org) and mined all these contacts for possible organizing leads.[86] Union organizers helped build intra-company

[86] The union used an e-mail merge program that allowed them to send out bulk e-mails (which they did state by state) that do not register as spam, and are thus not blocked by anti-spam filters, and that arrive in each individual's mailbox with an individual header, looking like a personal e-

relationships, connecting individuals from the same company that responded to the union's outreach. They were particularly keen on following up any leads where NLRB organizing seemed like it might be viable. There is some disagreement and discussion within WashTech's leadership on the degree of emphasis on this priority. Courtney is clear in his view that eventually WashTech must find ways to establish collective bargaining; while not wedded to traditional models or traditional routes to collective bargaining, he understands *bargaining power* as the fundamental currency of the worker-employer relationship. Without disagreeing with that analysis, Blain nonetheless stresses the idea of *movement* over the focus on collective bargaining: "I think we need to build a mass movement of tech workers nationally that doesn't revolve around seeking collective bargaining."[87] Given the immense obstacles to workplace-based unionism in the IT sector and to NLRB organizing in particular, Blain feels traditional organizing leads should not be pursued at the expense of building a broader base. To date, WashTech has not been successful by either measure.

"We haven't done it yet," Blain pointed out about the prospect of translating any of the thousands of follow-up contacts into a collective bargaining agreement. "It doesn't mean it can't happen," he added. "But I think the chances of victory in a particular workplace would be higher if we had kind of this broader base of people who were part of what we're doing even if they're not covered by a contract or whatever. And you'll produce more leads."[88] The distance between Blain and Courtney's views on the matter is not that far, and in fact, WashTech is both working to create a broad base of organized (in the literal sense) tech workers and sniffing out possibilities for more immediate campaigns. The fact that the

---

mail. Todd Tollefson, a WashTech member and part-time paid organizer working on this follow-up project, estimated that roughly 15% of the people contacted this way responded to the e-mails. These responses, in turn, are individually responded to by Tollefson and others working on the project.

[87] Blain, interview.

[88] Ibid.

union has not generated any contractual relationships from the outsourcing campaign, or the rest of its work, should not necessarily be seen as either a sign of failure, or as an indication that their strategy is flawed. Rosenberg said that from the beginning organizers' estimates were that it would take seven to10 years to "build a real organization of high-tech workers."[89] It is simply too early to tell what the long-term prospects for WashTech are.

It is not, however, too early to evaluate their strategies and efforts to date. In this regard, it is important to measure their accomplishments in part by what came before—more precisely, by the fact that there was nothing there at all before, or as Blain put it, that the union started at "negative three." As noted earlier, WashTech leaders' responses to the outcome of the Amazon campaign were striking precisely because they saw in that outcome small steps forward instead of a big defeat. Recalling the initial organizing around the L&I overtime ruling and the effort to build a mailing list out of it, Courtney reflected on the outsourcing campaign as a measure of how far the union had come organizationally: "Here we are five years later and it's more sophisticated and we're actually driving the letter-writing so we can actually capture that e-mail address right away."[90] The TaxSaver campaign, meanwhile, demonstrated that the union could, under certain circumstances, pressure employers directly for changes without the aid of formal bargaining relationships. It also illustrated that a small group of strategically placed workers could have leverage over a huge company, making a dramatic if isolated case for minority unionism. Improvements in conditions for contract workers at Microsoft, such as agency choice and better benefits, are also partly a WashTech accomplishment.

All these limited gains clearly show that resistance is not futile, even when one is taking on "the flagship corporation of American capitalism," as Courtney referred to

---

[89] Rosenblum, interview.

Microsoft.[91] How much power that resistance can generate, given the immense structural leverage that IT firms have over their workers, remains to be seen.

[90] Courtney, interview.
[91] Ibid.

CHAPTER 6

Conclusion: Handcuffed by history

I. Introduction

In all three of the case studies presented here unions worked incredibly hard, with sophisticated analyses, multifaceted strategies and great commitment and creativity, and generated notable achievements against the odds. Yet only in one case, Las Vegas, can we say that the union has reached the kind of industry-wide regional power that not only "takes wages out of competition" but also gives the union meaningful leverage in relation to employers. And in that case, the structural advantages enjoyed by the Culinary Union make it the labor equivalent of being born on third base and thinking you've scored a home run.[1] In Florida, SEIU Local 1199FL has a remarkable success rate in NLRB elections and they are a presence in state politics and the media far beyond their numbers; but they do not as yet have the market share nor the means to achieve it that would enable them to win "economic justice," in Monica Russo's term. WashTech, meanwhile, has established a media profile and a place in the information technology (IT) landscape, but they have neither a significant membership nor any stable capacity to effect or defend workplace changes.

These three cases in some ways represent a microcosm of the U.S. labor movement: investing enormous effort in organizing, with some real power as a result; but in most places,

[1] To be fair to the Culinary Union, they know they were born on third base. They are aware of their fortunate inheritance.

no matter how good the strategic calculus is, it seems like that old Smith Barney commercial that admonished "hard work will never be enough." Organizing on scale continues to elude labor. The evidence of this is, of course, the continuing slide in union density figures— 8.2% in the private sector in 2003. While certainly not all or even most unions have dedicated resources to an expanded organizing program, most of the country's biggest and most important unions have or are in the process of doing so. As noted in chapter 2, the six leading organizing unions (SEIU, HERE, CWA, UNITE, AFSCME and AFT)[2] represent 34% of the AFL-CIO's membership; a minority, but a significant minority. Yet despite money, staff and strategic planning, they have been unable to organize in the kinds of numbers that would reverse the downward trend in density. And thus the initial hope and even euphoria of the New Voice victory in 1995 has, eight years later, increasingly given way to more pessimistic pronouncements about the loss of union power. In addition to ongoing efforts to devote ever-greater resources to organizing, the continuing erosion has started to generate calls for other responses, and has been the catalyst for a new debate in the labor movement about what to do.

"The crisis facing labor can't and won't be addressed by doing more of the same," SEIU strategist Stephen Lerner asserted, setting the tone for the discussion.[3] Some, like Lerner and the New Unity Partnership (NUP) with which his work is associated, have called for structural changes in the labor movement. Emphasizing the lack of jurisdictional discipline, they have advocated a greater focus on strategically building union density and have called for jurisdictional reorganization of unions and above all for much more

[2] The breakdown on the alphabet soup: Service Employees International Union (SEIU), Hotel Employees and Restaurant Employees International Union (HERE), Communications Workers of America (CWA), Union of Needletrades, Industrial and Textile Employees (UNITE), American Federation of State, County and Municipal Employees (AFSCME) and the American Federation of Teachers (AFT).

centralization. Others have criticized the NUP proposals as running roughshod over union members' control of their institutions. The concerns that have been raised about accountability and union democracy grow out of not so much an abstract commitment to member control, but rather a belief that the power of the labor movement lies primarily not in its multifaceted strategies but in its mass base. The advocates of social movement unionism argue that a single-minded emphasis on increasing market share neglects the need to build a broad-based movement that is allied with other social justice causes. The call for labor law reform has also gotten louder. The laws are so detrimental to organizing efforts, some feel, that unions cannot organize their way out of the hole they're in without reform; and thus, no matter how remote change seems politically, labor law has to be on the agenda.

II. Dissertation findings

The organizing efforts that I studied at Unite for Dignity/SEIU Local 1199FL, HERE Local 226 (Culinary) and CWA Local 37083 (WashTech) confirm the observations made in chapter 1. Specifically, they illustrate that labor law has made organizing extremely difficult to impossible; that unions are changing their organizing strategies as a direct result; that in their search for ways to combat the dual obstacles of employer hostility and inadequate labor laws unions are drawing third parties into their struggles to increase their power; and that among the third parties activated by unions, state actors emerge as a particularly critical group. Above all, the experience of these three unions in trying to organize their industries demonstrates that organizing on scale is all but impossible under the prevailing constraints. Unions can organize under these conditions, at least if they have a

[3] Stephen Lerner, "An Immodest Proposal: A New Architecture for the House of Labor," *New*

good power analysis and some access to third party leverage; but except under structural conditions so rare as to be analytically irrelevant, the immense amounts of time and resources it takes to organize preclude the possibility of signing up new shops fast enough to reverse labor's decline. All three cases present a rich tapestry of social and political relations— among employers, workers, unions, allies, media, financial actors, and a myriad of political, legislative and regulatory actors— that helps illuminate both the possibilities for labor power and the constraints on it.

In Florida, the Unite for Dignity/1199FL nursing home campaign offers perhaps the clearest example of the cross-cutting roles that the state plays in organizing campaigns. In contrast to the growing trend in the labor movement away from the NLRB, the union continues to use NLRB elections to win union drives. They do so because they feel they do not have leverage options with which to force employers into alternate voluntary recognition agreements (VRAs). While forced to contend with the NLRB election process, they limit their reliance on the board by organizing in secret and by focusing intensely on giving the workers the support and tools they need to prevail. At the same time, the board's procedural functions— setting election dates and counting ballots— is a crucial piece of their ability to win. When it comes to winning a first contract, by contrast, the NLRB functions almost exclusively as an ally of employers because its objections and appeals processes allow employers to delay certification and bargaining into oblivion. Here the union relies decidedly not on state actors, but on its strong community ties.

The 1199FL case also offers a graphic demonstration of the problem of organizing on scale. That, of course, is the reason that the union has emphasized political action. The union has leveraged a series of interconnected relationships to increase its power vis-à-vis

---

Labor Forum (volume 12, issue 2, summer 2003), 10.

industry employers. It leverages its own relationship with the Florida state legislature against the industry's relationship to the legislature through regulatory and funding issues, and then further leverages consumer/public interest in nursing home quality against both the industry and the legislature. Thus far, the union has successfully engaged this web of relations to improve staffing ratios, a huge concern for workers and consumers alike, but has not yet built enough power to force negotiations over union rights issues. Though unsuccessful so far, the union feels, as its secretary-treasurer, Dale Ewert, put it, "our best chance of getting industry-wide, corporate-wide or industry-wide, agreements that will allow us to organize on scale are going to come from our political work."[4]

Politics is also an indispensable part of the Culinary Union's success in Las Vegas. Again, regulatory issues provide the union with opportunities to intervene in the relationships between employers and state actors, opportunities that are enhanced by the union's electoral muscle. HERE's political leverage in Vegas is particularly potent because of the way it intersects with industry expansion. Both inside and outside of Vegas, companies wishing to build a new casino need approval from state actors (legislative and/or regulatory); thus the union's opportunities to intervene are multiplied. The expansion trend in gaming has provided the union with other avenues of interference, notably by giving it a chance to provide critical corporate research to financial actors such as lenders and investors. The expansion of the industry is thus a unique development that widens the web of relationships that the union can draw into their relationships with employers.

All of these factors are further enhanced by the historical inheritance of high union density; the union *began* its organizing program in 1989 with a majority of workers on the Las Vegas Strip already unionized. This is a highly unusual advantage for any union anywhere in

[4] Dale Ewert, interview by author, Miami, FL, June 4, 2002.

America. The Vegas case demonstrates the considerable power labor can wield even in the face of an unfavorable NLRB when it is able to combine leverages from several different interdependent relationships. At the same time, and for the exact same reason, it also demonstrates the limits of that power, because the leverage combination available to HERE Local 226 is extraordinarily unusual. There simply is no other place else in the United States with the same structural advantages.

Certainly CWA's experience with the WashTech project in Seattle offers a stark contrast. The IT industry's heavy reliance on contingent labor effectively forecloses the possibility of organizing through NLRB elections (as tough as that is). At the same time, none of the structural circumstances WashTech finds itself in provide the kind of leverage hooks that the union would need to wrest voluntary agreements/recognition from industry employers. There is no union density at all to leverage, and therefore also no bargaining-to-organize opportunities. Furthermore, since high-tech businesses are largely unregulated, the regulatory environment is not conducive to widening the struggle between workers and employers. Additionally, WashTech does not have the community allies that have proven so powerful in 1199FL's case.

Despite these disadvantages, the union has worked hard to build what power it can in the industry. They have used media very effectively to help establish WashTech as a player in discussions of IT issues. The union has also used Internet technologies to erase some of the limitations that scarce resources impose on union campaigns. The one significant ally resource WashTech has is Seattle's and Washington's labor movements, and they have benefited tremendously from that relationship, most notably in the legislative arena. WashTech has had an impressive presence in the state capital for a union of its size. 'Presence,' though, whether in the media or the legislature, has not translated into

membership, collective bargaining relationships or— except in isolated cases— concrete gains in workplace conditions. Those isolated cases, however, are instructive. As the organizing at Microsoft's TaxSaver unit demonstrates, IT workers' skills— their contributions to the worker-employer relationship— give them substantial power in that relationship, at least in combination with circumstances like product deadlines.

The TaxSaver example, in fact, brings back into focus the interdependencies of the *primary* relationship between workers and employers. This brings us full circle to the core conceptualization of power relations that underlies this dissertation: "People have potential power, the ability to make others do what they want, when those others depend on them for the contributions they make to the interdependent relations that are social life."[5] Much of the narrative here has emphasized the impact of third parties on the worker-employer relationship, including both the role of labor law in making the state a *de facto* ally of employers and the role of multiple parties (state, financial, community) in countering the employer-state alliance. This does not mean that the characteristics of the primary parties are irrelevant to the power dynamics between them. Indeed, the differences among the three cases studied here demonstrate otherwise.

In Las Vegas, casino workers are not only organized in the legal sense of having collective bargaining relationships, they are organized in the literal sense of having the internal structure and capacity to spread information, mobilize and act *en masse.* The Culinary Union can, and does, put 5,000 noisy pickets in front of a non-union hotel. Not a single one of the 550 striking Frontier workers ever crossed the picket line during more than six years. Worker organization in Vegas is so strong, in fact, that the strike has become a potential offensive weapon. "The success of the Horseshoe strike... revived striking as a viable tactic,"

Courtney Alexander, the union's research director, reported.[6] This capacity— the power to take large-scale collective action and to effectively exercise the exit option— depends on two things. As discussed, it is possible only because of the unusual structural advantages that Culinary has. But it also depends on worker *solidarity*; it depends, fundamentally, on workers' consciousness and on their commitment to each other. "We've had an unusual history, I'm not sure it compares with any other place," Local 226 Political Director Glenn Arnodo said. "It used to be your mother or father was Culinary, they brought you down here when you were 16 years old and you would get your union card and it was just instilled from generation to generation. There was so much more union consciousness here than you would find in many right-to-work states."[7]

The central power of worker consciousness and collective action is also apparent in the Florida nursing home case. While 1199FL enjoys none of the structural conditions that might make the strike a "viable tactic" the way it is in Vegas, their organizing model— and their impressive NLRB election win rate— is built on the self-conscious organization of workers as a collective actor. In plain English, workers identify with each other and understand that together they have power against their employers. This consciousness is not

---

[5] Frances Fox Piven and Richard Cloward, "Rulemaking, Rulebreaking and Power" (forthcoming), 13.

[6] Courtney Alexander, "Rise to Power: The Recent History of the Culinary Union in Las Vegas," in Hal Rothman and Mike Davis, Eds., *The Grit beneath the Glitter: Tales from the Real Las Vegas* (Los Angeles: University of California Press, 2002), 156. I did not discuss the Horseshoe strike in the body of chapter 4. I'll repeat here what I noted in a footnote in the conclusion to that chapter: Many of the family-owned properties that had not participated in the corporate-owned casinos' effort to bust the union in 1984 in 1989 took a harder line towards Culinary. This time it was the corporate players that were willing to settle, while the family businesses decided to try and rid themselves of the union. The strike at the Horseshoe was one result of that effort. Like the Frontier strike, it was declared an unfair labor practices strike, and won by the union after 11 months.

[7] Glen Arnodo, interview by author, Las Vegas, NV, October 23, 2002. Arnodo was referring to the days when the union had a hiring hall in Las Vegas, a highly unusual circumstance in a right-to-work state. The hiring hall is gone, hence his use of the past tense, but the union consciousness remains in Vegas.

enough for them to prevail— they also need the procedural help of the law to win elections and the community support of allies to win contracts— but without it they'd be nowhere.

What is clear from the experiences of both the SEIU and the HERE cases is that worker consciousness and solidarity are necessary but not sufficient conditions for successful organizing. This basic fact is also confirmed by the opposite experience of CWA in Seattle. In addition to— or prior to, if you like— the structural difficulties WashTech faces there is the fundamental problem that most workers in the industry simply do not think of themselves as workers; they think of their interests as aligned with the interests of their employers and not with the interests of their co-workers. "The strategy," said Andrea de Majewski, one of the original organizers of WashTech, "has been to build a consciousness of workers in the industry as such... .The real power we need to build is in the consciousness in the workers, because it just ain't there."[8] Even small victories like the TaxSaver workers' remain elusive for WashTech not just because of structural problems but because of the absence of a conscious collective actor.

Together the three cases studied in this dissertation represent a cross-section of 21st century union organizing in several regards: in their degree of worker organization, in their leverage capacities, in their strategies and tactics, and in their successes. WashTech is an example of minority unionism, a strategy that is not widely used but is closely watched and advocated by several labor-friendly intellectuals. Las Vegas is the poster child of card check strategies, by far the biggest trend in union organizing. Over 50% of successful organizing throughout the labor movement is now done outside the auspices of the NLRB; card checks are the primary mechanism within these non-board campaigns. The political strategy employed by 1199FL is also a significant trend in organizing, especially in healthcare

[8] Andrea de Majewski, interview by author, Seattle, WA, June 18, 2003.

organizing with its many regulatory hooks, and has been a component in other successful campaigns, such as the Catholic Healthcare West and Tenet agreements mentioned in chapter 2.

III. Labor's choices

The inability of the law to protect the right to organize has given rise to the strategies discussed here. The failure of these strategies to reverse the decline in union density, in turn, has given rise to a new debate within the labor movement about what to do next.

A series of articles published in 2002 and 2003 by Stephen Lerner, a longtime organizer and strategist for SEIU, has served as the baseline for discussion on labor's choices.[9] His analysis focuses on the importance of union density to union power (in fact, Lerner quite literally equates the two, a point to which we shall return). His main argument is that the structure of the labor movement is an impediment to organizing towards sectoral strength through regional labor market density in key industries. Lerner describes the decline of the labor movement in terms of two major factors: the growth of the economy away from unionized sectors and the inability of unions to organize from a weakened position. His prescription is a reorganization of the labor movement along jurisdictional lines and much greater centralization of resources, authority and planning, which he sees as prerequisites for

[9] As noted in chapter 2, Lerner's original piece, titled "Three Steps to Reorganizing and Rebuilding the Labor Movement," was initially circulated within SEIU as a discussion piece (labeled "draft—do not distribute," but fairly widely distributed nonetheless). It was subsequently published in various forms and more widely distributed. SEIU circulated a paper (dated February 2003) within the labor movement titled "United We Win. A Discussion of the Crisis Facing Workers and the Labor Movement" that is clearly based on the Lerner draft. Lerner, meanwhile, published nearly identical articles in *Labor Notes* ("Three Steps to Reorganizing and Rebuilding the Labor Movement," December 2002) and *New Labor Forum* ("An Immodest Proposal: A New Architecture for the House of Labor," summer 2003), all based on the same original draft. I continue to quote from the *New Labor Forum* article, because it is the most recent.

developing the capacity to mount campaigns with the scale and reach to successfully take on huge corporations in a hostile climate. His prescriptive argument builds on the trend of strategic organizing that already dominates the organizing unions and its basic power analysis (with the emphasis on industrial organizing and multifaceted campaigns that activate a range of third parties) is sound; but Lerner fails to probe the deeper structural underpinnings of labor's decline in his descriptive account, and thus ultimately falls short of proposing something other than "more of the same," the very thing he himself says will not work.

"Today's unions are not organized in strategic relationship to the changing economy," writes Lerner.[10] As noted in chapter 1, shifts in the U.S. economy have accelerated the decline of labor's numbers, density and power; industries with high density are shrinking or collapsing while the vast bulk of new jobs are in industries with few union roots. Lerner cites AFL-CIO data indicating that only one in 10 new jobs in the United States is a union job. As a result of these economic trends, over 300,000 new members must be added to labor's ranks every year just to keep the rate of union density steady.[11] Yet while everyone in the labor movement "salutes the flag of organizing," not everyone organizes. Indeed, notes Lerner, there was *less* new organizing in the 1990s than in the 1960s. "The labor movement, especially the private sector, isn't growing, isn't organizing on scale, and isn't winning... .Today we have more support for organizing and less organizing." The reason unions do not organize more, according to Lerner, is because they *cannot* organize more; they no longer have enough power to organize. "The decline of many AFL-CIO affiliates is so deep and severe that they do not have the resources or strength to challenge

[10] Lerner, 11.
[11] Kate Bronfenbrenner, Sheldon Friedman, Richard Hurd, Rudolph Oswald and Ronald Seeber, eds., *Organizing to Win.* (Ithaca: ILR Press, 1998), 3.

powerful employers on a large scale."[12] The weakness of unions is thus both cause and effect of the declining union density rate. On the one hand, shrinking memberships mean shrinking resources and declining market share means union standards cannot drive conditions in an industry, with the result that union wages, benefits, etc., tend to be pulled downward toward non-union wages in order for union businesses to stay competitive. On the other hand, weakened unions do not have the capacity to organize, and the failure to organize of course contributes to the declining density rate.

"Union density matters," asserts Lerner. Density gives unions the ability to drive standards in an industry and to take wages out of competition. This was on display, for example, in Las Vegas during the MGM organizing drive, where the non-union hotel had to provide union scale wages and benefits or better to attract workers. Sufficient density also makes resistance to unionization less economically rational for employers (though the evidence seems to me to indicate that such rational considerations do not affect many employers' opposition to union drives). Most importantly, "critical mass," that is sufficient union density,

> sets the stage for exponential growth. The combination of density, corporate leverage, community and political support helps neutralize employer opposition, and gives workers the courage to use their combined strength to organize, disrupt, and strike nonunion employers until these actions make being nonunion "irrational" and noncompetitive.[13]

Though he does not say it explicitly, the "exponential growth" facilitated by critical mass comes from the power to sidestep the NLRB election process and negotiate voluntary agreements with employers at an industry-wide or corporate-wide level.

"The challenge for unions," says Lerner, is "to claw their way to 'critical mass' within key industries and labor markets." He concedes that this is "difficult in a time of

---

[12] Lerner, 18.

decline"; he does not enumerate the factors that make it difficult, but rather focuses on how "the labor movement's structure is a roadblock" turning this difficult task into one that is "near impossible."[14] The structural obstacles are the jurisdictional hodgepodge of American labor and its fragmentation. These longtime characteristics of the U.S. labor movement prohibit unions from being able to deploy their aggregate social contributions and resources. The decentralized nature of U.S. labor, in other words, presents a problem of coordination that impedes the actionability of the full force of labor power. In the face of huge multinational corporations like Wal-Mart, labor needs to be able to match the coordination and reach of employers. "Unions need to think and act bigger," with massive comprehensive campaigns.[15] These are impossible without much greater coordination within labor, strategic mergers, and pooled resources. Lerner proposes that unions swap members and merge into 12 to 15 big sectoral unions with pure jurisdictional lines.

"In theory," Lerner notes, it is the AFL-CIO that should drive labor's revival and reorganization, but as a federated institution with no direct control over its affiliates and by culture and history "forced to operate by consensus," the AFL-CIO cannot effect these kinds of changes. The labor movement is "hamstrung" from trying bold new ideas by this tradition.[16] Thus Lerner advocates a few unions striking out on their own:

> A group of organizing unions need to start acting like a labor movement by adopting, enacting and embracing a set of principles that guide their actions in the short run and demonstrate how the labor movement should operate in the long run.[17]

The New Unity Partnership (NUP) is a group of five unions— SEIU, HERE, UNITE, Laborers' International Union of North America (LIUNA) and the United

---

[13] Ibid., 17.
[14] Ibid.
[15] Ibid., 23.
[16] Ibid., 26.

Brotherhood of Carpenters (UBC)— that is proposing to do just that. As noted in chapter 1, an internal NUP memo has found its way to the Carpenters for a Democratic Union website. I mention it here only because it brings into even sharper focus than Lerner the emphasis on centralization as the key to rebuilding labor power.[18]

Lerner's articles and the NUP itself have ignited debate in the labor movement over their proposals for reviving and reorganizing unions.[19] For the most part, critics have begun by agreeing with a good portion of Lerner's analysis and welcoming his articles as a catalyst for an important discussion within the house of labor. At the same time, Lerner and NUP have been widely criticized for focusing exclusively on union density as the measure of union power, for giving short shrift to any serious thought about the role of workers in the reorganization scheme, and for weakening the accountability of labor leaders in a more centralized system. Underlying the specific criticisms is a more basic disagreement about the nature of union power. Before turning to the differences raised by critics, largely from the social movement unionism camp, I want to note again that the strategic organizing model that Lerner puts forth is widely accepted throughout the labor movement. Most of strategic

---

[17] Ibid., 27.

[18] "Multi-Union Growth Partnership" (available at http://www.ranknfile.net/nup.htm). The NUP propose even greater dedication of resources to organizing, 77%. Though the stated idea of NUP is leading by example through reorganization amongst themselves, a great deal of this document deals with the reorganization of the AFL-CIO and its subnational structures. Proposed are the slashing of many of the federation's departments, renaming the organizing department the "strategic growth department," "drastically" consolidating central labor councils (CLCs), and eliminating both the CLCs' and state feds' independence by appointing their leaders and controlling their budgets centrally.

[19] As noted in chapter 2, *Labor Notes*, a leftwing labor publication, has hosted a "roundtable" of articles on its website in the last year called "Organizing: What's Needed," most of which are written in reference to Lerner's *Labor Notes* piece. In addition, the outing of the internal NUP document has generated several critical articles. These include: JoAnn Wypijewski, "The New Unity Partnership: A Manifest Destiny for Labor," *CounterPunch* (October 6, 2003, http://www.counterpunch.org/jw10062003.html); and Herman Benson, "The New Unity Partnership: Sweeney critics would bureaucratize to organize," *Union Democracy Review* (no. 149, December 2003/January 2004, http://www.uniondemocracy.org/UDR/articles52.htm). The Wypijewski piece, also posted on the leftwing listserv portside, generated a flurry of further posts, both in support of and criticizing the NUP, including a piece by SEIU Executive Vice President Tom Woodruff and a rejoinder to her critics by Wypijewski.

assumptions and prescriptions in Lerner's "Immodest Proposal" confirm and extend trends in current organizing.

Foremost among the shared assumptions is simply the belief that employers cannot be organized without massive efforts that involve multiple third parties. The emphasis on market share and regional labor markets, and the menu of tactics Lerner lists, from corporate leverage to community and political support, also characterize all three of the case studies here (especially the SEIU and HERE cases). This strategic organizing model is focused on industrial organizing with the ultimate aim of some form of partnership. In Las Vegas, where HERE's structural position has given it unusual leverage, a genuine partnership exists. In Florida, SEIU has yet to amass enough power to forge such a partnership, but their political strategy is aimed at industry-wide or corporate-wide agreements that grant union rights in exchange for legislative help, which is generally the thrust of labor-management partnership agreements. This kind of strategy relies ultimately, as the term partnership implies, on an alliance between unions and employers to work together for industry goals, and at times that alliance can undercut union ties to other allies. This has *always* been a dilemma for labor: workers' fates are tied to their employers' and unions are caught in the tension between supporting their members by become partners with their employers or supporting them by working for broad class-based change. A vivid example of the problem that the partnership choice can generate was the 2002 endorsement of New York State Republican incumbent George Pataki for governor by SEIU Local 1199NY. With Pataki's help, the union had secured legislation that increased funding to hospitals and, as part of that, funded raises for its members; their endorsement of the governor a few months later was seen as a political pay-off for the legislation. The union was heavily criticized by many (though by no means all) in the state's labor movement, who argued first, that the 1199NY deal had undercut

efforts at broader healthcare reform; and second, that the endorsement of Pataki was against the interests of the working class.

The strategic organizing model, which increasingly overlaps with the trend towards non-board organizing, is a response to the inability of unions to organize on scale using the NLRB. With the law stacked against them, the mobilization of workers' contributions in the worker-employer relationship is constrained in its scope and diminished in its effect. To organize those contributions and make them actionable— to organize workers— is not enough to win. Unions have largely chosen to compensate for this circumstance by leveraging third parties, rather than by defying the constraints through rule-breaking strategies or seeking to undo them through rule-making strategies. Strategic organizing aims at directly changing company behavior by leveraging third parties in a particular way— e.g., putting financial pressure on employers via investors and lenders, or political pressure on them via regulatory or legislative activism. This kind of recruitment of other third parties as a means of augmenting labor power has the signal advantage for the unions of not relying on rule-breaking as a power strategy. Nor is it a rule-making strategy. The rule-breaking alternative would be workers using their power in the interdependent relationships with their employers and defying the laws limiting its exercise, e.g., rules against plant occupations, mass picketing, secondary boycotts, etc. This strategy, theoretically available to unions in all three of my case studies, was not used there and in general is not about to happen in the United States in 2004 for two reasons. One, because such a rule-breaking strategy risks the resources and survival of unions as institutions, and therefore the legal third-party strategies are much safer and more appealing. And two, because American workers are not that riled up. There are isolated exceptions, of course, but in general the kind of mass defiance of rules that this strategy would require is just not there.

Many union strategists have commented on this. Bill Fletcher, for instance, has noted, "Social movements are not willed into existence."[20] Lerner's analysis also takes note of this:

> There are times where a confluence of forces come together and create conditions in society that dramatically increase the hand that workers and unions have to play that make it possible to win on a grand scale. In these times, growth comes in dramatic spurts. We don't currently live in such a time, nor do we have the luxury for waiting for one and doing nothing... .we have to be very clear on what the preconditions for winning in the current environment are. While we can't create a spurt or movement out of sheer will, we can take very concrete steps to win strategic victories now.[21]

The aim, then, in a period of unfavorable political and legal conditions and absent a mobilized working class, is to build the capacity for "strategic victories." The strategic calculus here deliberately shifts the center of gravity away from the direct power of workers onto the various interdependencies with bargaining, political, regulatory, financial and ally relationships. The victories labor has scored in the teeth of vicious opposition have indeed been won by enlisting these third parties. But they have also depended on the consciousness and solidarity of workers, as noted above. Social movement unionists' criticism of Lerner and NUP rests ultimately on the judgment that the focus on 'strategic' questions (with which no one disagrees) comes at the expense of building the base of the labor movement. Lerner's "new architecture for the house of labor," in other words, is missing the necessary foundation on the collective power of workers and— to torture the analogy just a little further— like any building without a solid foundation, it is vulnerable to the elements.

What labor needs, says Fletcher, is "a vision of a different USA, and indeed a different world."[22] Fletcher and other advocates of social movement unionism insist that the

---

[20] Bill Fletcher, speech at Labor Notes conference, http://www.labornotes.org/conferences/speeches.html (September 2003, viewed December 21, 2003).
[21] Lerner, 22, 23.
[22] Fletcher.

keys to union power and thus growth lie in broad-based class strategies. They seek to build labor's power by focusing worker consciousness and organization— strengthening workers as a collective actor— and by mobilizing a broader base of allies. This strategy, too, has a significant third-party component, but third-party leverage is deployed differently here. Rather than being targeted precisely at individual employers or industries, it aims for much wider change, a change in the climate and conditions for organizing, a "different world." Ultimately, the state is the crucial target in the social movement model; it is a rule-making strategy. Perhaps the most striking thing about Lerner's proposal, especially because it is billed as a *new* architecture for the house of labor, is the absence of any discussion of either rule-breaking or rule-making strategies. The shortcoming of his analysis is not in what is there, but in what is missing. Lerner tries to set a pessimistic tone, asserting flatly that most unions do not have the resources to organize, and calling for "an honest analysis of why unions continue to fail to organize, build, and exercise power."[23]

Yet in a significant sense his analysis is neither pessimistic nor honest enough. He begins by noting that labor's decline continued under a Democratic president and a booming economy. "Having missed an incredible opportunity to grow in a time of prosperity," he says, unions must now figure out how to grow in the face of far less hospitable circumstances.[24] The structural continuities of the last quarter of the century are more significant than the variations in the White House and the GDP, however, and the "opportunity" for labor in the 1990s was largely an illusion. Neither of the causal factors of the decline that Lerner cites, the growth of the economy away from unionized sectors and the fragmentation of the American labor movement, were affected by the political and economic conditions in the 1990s (if anything, economic growth in the 90s accelerated the

[23] Lerner, 9-10.

growth of non-union industries). Two others that are implicit but never discussed— the virulent opposition of employers to unions and the complete ineffectuality of the law to protect the right to organize— were also constant on either side of the turn of the century. Lerner focuses on only one of all these factors as the solution to the decline, the problem of labor's structure. Consolidation, coordination, increased resources, industrial organizing and comprehensive campaign tactics have been the rule in several unions and industries already, however, and these have not significantly increased union density in those sectors. The evidence of the case studies in this dissertation suggests that strategic organizing is simply not enough. Unions can organize, even in the hostile climate of the 21st century, but they cannot organize on scale. Both Lerner and the empirical work here point to that conclusion. Lerner, however, thinks that the problem of scale can be licked with sufficiently massive scale of organizing (with the prerequisite centralization) without any other changes. The conclusions of this study do not support that optimism.

The scale and density problem is brought together with a social movement analysis in an interesting way by Ben Day in his piece "Why Organizing Won't Work: A Radical Politics for American Labor." Drawing on a comparative perspective, Day argues that the European experience suggests that density and union success are explained by "the level at which labor market institutions, such as bargaining, are centralized."[25] Such centralization has been achieved mainly through "mass strike activity carried out in the course of sweeping social movements."[26] As noted in chapter 2, the level of labor market centralization (more precisely, the lack thereof in the U.S.) magnifies the effect that backwards labor laws,

---

[24] Ibid., 9.
[25] Ben Day, "Why Organizing Won't Work: A Radical Politics for American Labor," manuscript, 13. An abridged version of this paper is forthcoming in *Working USA*. The original is available from the author at bd66@cornell.edu.
[26] Ibid., 14.

employer hostility and economic development have on organizing. U.S. labor's decentralized structure has left it more vulnerable to these factors, because it has turned the recruitment of virtually every single new member into a pitched battle at the enterprise level while necessitating ever more of those battles just to keep even with the existing level of union density. Here Day's analysis dovetails with Lerner's. But Day rejects the idea that labor can organize its way out of the crisis within the existing political framework. The number of workers unions would have to organize every year just to stand still, let alone to increase union density, is just too great under the current hostile conditions. Citing Henry Farber and Bruce Western's data, Day writes:

> The sad fact is that organizing efforts, even if they were to increase in number and success to many times their present state, would make almost no difference. If, between 1973 and 1998, there had been *no organizing at all*, union density would be only 1.7 percent lower than it is now. It would have required a successful organizing rate *five times* what it actually was *for all twenty-five of those years* to even achieve a stable, non-declining union density of 17.5 percent.[27]

Day's solution to the problem is "radical political organizing: bringing to bear all the tools of dissent in pursuit of an ambitious, just vision of what our society should be." He places himself squarely in the social movement unionism camp, but unlike many other of its advocates, he sees the highly decentralized structure of the U.S. labor movement as a prime obstacle to "social movement activism."[28] Decentralized labor movements tend to reproduce the inequalities of the labor market; weaker unions and unions of low-wage workers have less resources with which to fight to change their situation. Moreover, decentralization means that "the ability to organize strategic action on a large scale is debilitated, and every local must individually face the costs of whatever actions they take on their own. The result

---

[27] Ibid., 17. See also Henry Farber and Bruce Western, "Round Up the Usual Suspects: The Decline of Unions in the Private Sector, 1973-1998" (Princeton University Industrial Relations Section, Working Paper #437, April 2000).
[28] Ibid., 18.

is that any large-scale activities within the labor movement face a collective action dilemma."[29] Here again Day's analysis agrees with Lerner's, and he, too, calls for centralized planning of organizing. In response to the concerns raised by NUP critics about the undemocratic nature of the NUP plan, Day correctly points out that the level of decision making is a separate question from its democratic accountability to a membership base.[30] He reverses the usual linkages made by American unionists, calling for greater centralization *and* broad class-based vision:

> American labor needs to broaden its vision of what workers rights are within the modern economy, and fight for them alongside the entitlements of citizenship that are being tucked under the carpet by America's elites. The American labor movement needs to actually become a movement, instead of a name for thousands of isolated movements.... Labor needs to organize *politically* and *radically* – in short, it needs to organize a social movement for *social* change. And it needs to transform itself in the process, bringing together its atomized structure into one that is capable of acting collectively and strategically.[31]

How such a transformation might be accomplished Day does not say. It is an enormous challenge, given that the two main historical inheritances of the U.S. labor movement push it in exactly the opposite direction: a decentralized and fragmented structure, narrowly focused on the enterprise level rather than broadly politically cast.

Day's prescription is right, however, and all this brings us finally to the question of labor law reform. Reform has been written off for a quarter century as politically impossible, but it is back on the official labor agenda. In November 2003, reform legislation was introduced in Congress with the backing of the AFL-CIO for the first time since 1978. The

---

[29] Ibid., 19.

[30] "[C]entralization merely describes the level at which decision-making is made – it says nothing of whether decisions are made in a more or less democratic way, or whether they are controlled by the membership. All of the progressive concerns are vital for whatever unit decision-making takes place within. This demand for democratic decision-making and worker control needs to be *disentangled* from the demand for localism and decentralization of resources, though. It is simply impossible for large-scale organizing to be carried out if organizing resources *and* responsibility for strategizing are heavily devolved to locals"; Day, 21. That said, it should be noted that the NUP plan calls for both a heavily centralized and markedly undemocratic structure.

prospects for labor law reform are indeed grim, but many in the labor movement are coming to the conclusion that the prospects for organizing without reform are even grimmer. This conclusion is warranted in general by the continuing slide in density numbers even as unions have made substantial efforts to organize, and also specifically by the findings of this dissertation. Labor's best and brightest have been unable to organize on scale in the face of the dual obstacles of employer hostility and inadequate labor laws. That circle cannot be squared without rewriting the power equation between workers and employers.

IV. The enduring role of the state

Throughout U.S. history the state has played a central role in determining both the shape and the fate of the labor movement. Labor policy has generally repressed workers' aspirations and/or sought to channel labor activism away from broad class-based and disruptive strategies and into narrow enterprise-based structures that institutionalized conflict and thus defanged labor tactics. In the 19th century widespread judicial nullification eliminated labor's ability to effect change through legal reform. "Even when labor won, it lost," observed William Forbath, because although the labor movement successfully passed many pieces of labor legislation, the courts invalidated virtually all of them.[32] Through injunctions against strikes, the courts also severely curtailed what kind of economic action workers could undertake; secondary strikes, citywide boycotts, and even recognition strikes were regularly enjoined. Through these means, the state repressed and eventually ended broad challenges to the dominant pattern of labor relations in the emerging industrial order.

---

[31] Ibid., 22-23.
[32] William Forbath, "The Shaping of the American Labor Movement," *Harvard Law Review* (Vol. 102, April 1989), 1178.

In the 1930s, when widespread labor unrest and electoral instability forced elites to give in to worker demands, the new national structure of labor relations channeled worker grievances into enterprise-based collective bargaining. Efforts by unions like the UAW to widen collective bargaining to broader social concerns were thoroughly rebuffed. Meanwhile, in 1947, the Taft-Hartley bill once again limited the scope of permissible labor action by banning sympathy strikes and secondary boycotts. Labor was steered away from class-based action and into enterprise-based bargaining.

These developments gave us, first, "pure and simple trade unionism," and later the business unionism of the post-war era. Both were accommodations to the constraints placed on labor by a state largely allied with economic elites. This inheritance is not a mere historical curiosity; to the contrary, it has a profound influence on the current situation. On the one hand, the development of labor law has made a mockery out of the idea of the right to self-organization. When NLRB certification can be held up because the employer claims the union used voodoo to win an election, as was the case in the Mt. Sinai-St. Francis nursing home; when workers can vote for the union and have their vote upheld at every administrative and judicial level only to have the employer stall for eight years, then sell the business and fire them all, as was the case at the Santa Fe Hotel; when employers can shut down a facility where workers are organizing and outsource all the jobs to India, as was the case at Amazon.com; and when it can take 53 years to win a union election, as was the case at Canon Mills— the right to organize is a legal fiction and the state is the *de facto* ally of employers. On the other hand, the bias against broad class-based unionism and the institutionalization of enterprise-based collective bargaining has left the labor movement highly decentralized and ill-equipped to deal with the challenges of organizing under the current conditions.

The labor movement is trying hard to overcome these legacies. Unions have moved deliberately away from reliance on the NLRB and they have evolved multifaceted strategies to leverage the interdependencies of a myriad of third parties. Individual victories have been at times impressive, but as we have seen, labor cannot organize on scale this way. The proposals of the NUP attempt to deal with one part of the inheritance that limits labor's power, the problem of decentralization. Yet the partnership model that is implicit in their call for strategic organizing has a faint hint of the old AFL voluntarism. The emphasis is on building enough labor power to directly engage employers and wrest agreements from them. Though the strategic menu includes a great deal of political and regulatory leverages, it is fundamentally oriented around the direct relationship between workers/unions and employers. Advocates of social movement unionism and labor law reform, on the other hand, address the other main historical legacy of the state's role in shaping the labor movement. They want labor to represent a broad class-based agenda in alliance with other social movements, cutting against the grain of the narrowly focused unionism that U.S. labor policy has shaped through both what it has allowed and what it has disallowed.

"If we could start from scratch," Lerner asks rhetorically, "and weren't handcuffed by history, tradition, and protecting individual leaders' domains, would we create a movement that is structured like this one?"[33] Of course not. But the labor movement *is* bound by history, its current options shaped by its past choices and the actions of employers. It is above all the state that has done the handcuffing, though, throughout U.S. history and to this day. American workers and unions today, like generations before them, are looking for ways to slip the restraints. Their chances do not look good at the moment, but their potential power remains as strong as it ever was. That is to say, the fundamental

[33] Lerner, 22.

interdependence of workers and employers is the same as it ever was. Workers' social contributions in their relationships with employers have not changed, even though the actionability of those contributions has. The words of the labor anthem "Solidarity Forever" remain as true today as when they were written in 1915: "without our brains and muscle not a single wheel would turn."

Bibliography

Acuff, Stewart. "Organizing in the 21st Century: Strategic Challenges for the Labor Movement" speech at Cornell University School of Industrial and Labor Relations. New York, April 9, 2003.

———. "Expanded Roles for the Central Labor Council: The View from Atlanta.." In Bruce Nissen, ed., *Which Direction for Organized Labor?* Detroit: Wayne State University Press, 1999, 133-142.

———. "The Atlanta Labor Council: Building Power through Mirroring the Membership." In Immanuel Ness and Stuart Eimer, eds., *Central Labor Councils and the Revival of American Unionism.* Armonk: M.E. Sharpe, 2001, 201-220.

AFL-CIO. "Employee Free Choice Act," http://www.aflcio.org/aboutunions/voiceatwork/efca.cfm (viewed December 3, 2003).

AFL-CIO Executive Council statement. "An unprecedented labor movement campaign in support of the freedom of workers to choose a voice at work." February 26, 2003.

AFL-CIO Industrial Union Department. *Insurmountable Obstacles: an international comparison of the path to union recognition between the U.S. and the industrialized democracies.* 1995.

AFL-CIO Issue Brief. *The Silent War: The Assault on Workers' Freedom to Choose a Union and Bargain Collectively in the United States.* June 2002.

AFL-CIO Lawyers Coordinating Committee. *The Labor Law Exchange: The Dotson Board's Decisions 1983-1985.* No. 4, 1985.

AFL-CIO Lawyers Coordinating Committee. *The Labor Law Exchange: The Stephens Board.* No. 12, 1993.

AFL-CIO National Organizing Summit. "Report to the Executive Council of the AFL-CIO." February 2003.

AFL-CIO Organizing Department. *Bargaining to Organize Reference Manual.* 2000.

Agriesti, Jo Marie. Interview by author. Las Vegas, NV, October 24, 2002.

Alexander, Courtney. "Rise to Power: The Recent History of the Culinary Union in Las

Vegas." In Hal Rothman and Mike Davis, eds., *The Grit beneath the Glitter: Tales from the Real Las Vegas.* Los Angeles: University of California Press, 2002.

———. Interview by author. Las Vegas, NV, October 28, 2002.

Arnodo, Glen. Interview by author. Las Vegas, NV, October 23, 2002.

Aronowitz, Stanley. *From the Ashes of the Old! American Labor and America's Future.* Boston: Houghton Mifflin, 1998.

———."Labor on Trial: Assessing Sweeney's Record." *Working USA.* Vol. 5, no. 2, fall 2001, 10-31.

Barbaro, Michael. "A North Carolina Town, Unraveled." *Washington Post.* August 9, 2003.

Bensinger, Richard. "When We Try More, We Win More: Organizing the New Workforce." In JoAnn Mort, ed., *Not Your Father's Labor Movement. Inside the AFL-CIO.* New York: Verso, 1998, 27-42.

Benson, Herman. "The New Unity Partnership: Sweeney critics would bureaucratize to organize." *Union Democracy Review,* http://www.uniondemocracy.org/UDR/articles52.htm. No. 149, December/January 2003.

Benz, Dorothee. "Scaling the Wall of Employer Resistance: The Case for Card Check Campaigns." *New Labor Forum.* No. 3, fall/winter 1998, 118-128.

———. "The Battle's Just Begun." *UNITE! Magazine.* Vol. 6, no. 2, summer 2000, 12-13.

———. "One Step at a Time. From Coast to Coast, Pillowtex workers fight for their jobs and their union." *UNITE! Magazine.* Vol. 8, no. 3, fall 2002, 8-9.

Bernstein, Irving. *The Lean Years. A History of the American Worker 1920-1933.* Baltimore: Penguin Books, 1966.

———. *Turbulent Years. A History of the American Worker 1933-1941.* Boston: Houghton Mifflin Company, 1970.

Blain, Mike. Interview by author. Seattle, WA, June 19, 2003.

Bluestone, Barry and Bennett Harrison. *The Deindustrialization of America.* Basic Books, 1982.

Bor, Victoria. "Dotson Board Reversals of Prior NLRB Precedent." In AFL-CIO Lawyers Coordinating Committee, *The Labor Law Exchange: The Dotson Board's Decisions 1983-1985.* No. 4, 1985.

Bowie, Erin. "The CWA's Experience, A Tale of Two Card-Check Agreements." *Labor*

Notes, http://labornotes.org/archives/2003/04/e.html. April 2003 (viewed December 11, 2003).

Brecher, Jeremy. *Strike!* Cambridge: South End Press, 1997.

Brody, David. *Workers in Industrial America.* New York: Oxford University Press, 1980.

———. "Section 8(a)(2) and the Origins of the Wagner Act." In Sheldon Friedman, Richard Hurd, Rudolph Oswald, and Ronald Seeber, eds.,*Restoring the Promise of American Labor Law.* Ithaca: Cornell ILR Press, 1994.

———. "Labor Elections: Good for Workers?" *Dissent*. Summer 1997, 71-77.

Bronfenbrenner, Kate. "Employer Behavior in Certification elections and First-Contract Campaigns: Implications for Labor Law Reform." In Sheldon Friedman, Richard Hurd, Rudolph Oswald and Ronald Seeber, eds., *Restoring the Promise of American Labor Law.* Ithaca: Cornell ILR Press, 1994, 75-89.

———. "The Role of Union Strategies in NLRB Certification Elections." *Industrial and Labor Relations Review.* Vol. 50, no. 2, January 1997, 195-212.

———.*Uneasy Terrain: The Impact of Capital Mobility on Workers, Wages, and Unions.* Submitted to the U.S. Trade Deficit Review Commission. September 6, 2000.

———. "Union Power Means More Than Market Share." *Labor Notes*, http://labornotes.org/archives/2003/01/f.html. January 2003 (viewed December 11, 2003).

Bronfenbrenner, Kate, Sheldon Friedman, Richard Hurd, Rudolph Oswald and Ronald Seeber, eds. *Organizing to Win*. Ithaca: Cornell ILR Press, 1998.

Bronfenbrenner, Kate and Robert Hickey. "Blueprint for Change. A National Assessment of Winning Union Organizing Strategies." AFL-CIO Organizing Department, 2003.

Bronfenbrenner, Kate and Tom Juravich. "It Takes More than House Calls: Organizing to Win with a Comprehensive Union-Building Strategy." In Kate Bronfenbrenner, Sheldon Friedman, Richard Hurd, Rudolph Oswald and Ronald Seeber, eds., *Organizing to Win*. Ithaca: Cornell ILR Press, 1998, 19-36.

———. *Ravenswood. The Steelworkers' victory and the Revival of American Labor.* Ithaca: Cornell University Press, 1999.

Budd, John and Paul Heinz. "Union Representation Elections and Labor Law Reform: Lessons from the Minneapolis Hilton." *Labor Studies Journal.* Vol. 20, no. 4, winter 1996.

Buhle, Paul. *Taking Care of Business. Samuel Gompers, George Meany, Lane Kirkland and the Tragedy of American Labor.* New York: Monthly Review Press, 1999.

Bunn, Elizabeth and Bob King. "Short Shrift to Globalization." *New Labor Forum* Vol. 12, issue 3, fall 2003, 85-88.

Bureau of Labor Statistics. "Union members in 2002." ftp://ftp.bls.gov/pub/news.release/union2.txt (viewed September 4, 2003).

———. "Union members in 2003." http://www.bls.gov/news.release/pdf/union2.pdf (viewed January 30, 2004).

Century Foundation task Force on the Future of Unions. *What's Next for Organized Labor?* New York: The Century Foundation Press, 1999.

Chiques, Richard. Interview by author. Tampa, FL, May 30, 2002.

Clawson, Dan. *The Next Upsurge.* Ithaca: Cornell ILR Press, 2003.

Cobble, Dorothy Sue. "Labor Law Reform and Postindustrial Unionism." *Dissent.* Fall 1994, 474-480.

Cohen, David. "Labor Needs a New Approach to Organizing...But Members Must Be a Part of It." *Labor* Notes, http://labornotes.org/archives/2003/01/e.html. January 2003 (viewed December 11, 2003).

Cohn, Jonathan. "The Jungle: Amazon.com and the Return of the Old Economy." *The New Republic Online*, thenewrepublic.com/021901/cohn021901_print.html. February 19, 2001 (viewed February 20, 2001).

Communications Workers of America, *CWA at Southwestern Bell. Five Years to Card Check.* 1997.

Comstock, Phil and Maier Fox. 1994. "Employer Tactics and Labor Law Reform." In Sheldon Friedman, Richard Hurd, Rudolph Oswald, and Ronald Seeber, eds., *Restoring the Promise of American Labor Law* Ithaca: Cornell ILR Press, 1994, 90-109.

Cooper, Marc. "Labor Deals a New Hand." *The Nation.* March 24, 1997, 11-12.

Coppess, James and Sarah Fox. "Decisions by the Dotson Board in Nonprecedent-Setting Cases: The Psychopathogy of Everyday Life." In AFL-CIO Lawyers Coordinating Committee, *The Labor Law Exchange: The Dotson Board's Decisions 1983-1985.* No. 4, 1985.

Courtney, Marcus. Interview by author. Seattle, WA, June 20, 2003.

Crump, Joe. "The Pressure's On: Organizing without the NLRB." *Labor Research Review*. Vol. X, no. 2, fall/winter 1991/1992, 33-44.

Culinary Workers' Union. "History,"

http://www.culinaryunion226.org/english/pages/history.html (viewed May 8, 2002).

Culinary Workers' Union, Research Department. *Would you bet a billion dollars on a single roll of the dice? An advisory on the MGM Grand Hotel & Theme Park.* 1992.

Dahl, Squire. Interview by author. Seattle, WA, June 20, 2003.

Dannin, Ellen and Terry Wagar. "Impasse and Implementation— How to Subvert the National Labor Relations Act." *Working USA*. Vol. 4, no. 2, fall 2000.

Davis, Mike."Armageddon at The Emerald City." *The Nation.* July 11, 1994.

Day, Ben. "Why Organizing Won't Work: A Radical Politics for American Labor." Manuscript.

de Majewski, Andrea. Interview by author. Seattle, WA, June 18, 2003.

Devinatz, Victor. "The Fair Deal Campaign: The Evolution of a Non-NLRB Election Organizing Strategy for Milwaukee Asbestos-Abatement Workers." *Labor Studies Journal.* Vol. 22, no. 3, fall 1997.

Dean, Amy. "The Road to Union City: Building the American Labor Movement City by City." In Jo-Ann Mort, ed., *Not Your Father's Union Movement.* London: Verso, 1998, 157-166.

———."The South Bay AFL-CIO Labor Council: Labor's New Laboratory for Democracy in Silicon Valley." In Immanuel Ness and Stuart Eimer, eds., *Central Labor Councils and the Revival of American Unionism.* Armonk: M.E. Sharpe, 2001, 188-200.

Delaney, John, Paul Jarley and Jack Fiorito. "Planning for Change: Determinants of Innovation in U.S. National Unions." *Industrial and Labor Relations Review.* Vol. 49, no. 4, July 1996.

Delgado, Hector. "Immigrant Nation: Organizing America's Newest Workers." *New Labor Forum.* No. 7, fall/winter 2000,. 29-39.

Denton, Sally and Roger Morris. *The Money and the Power. The Making of Las Vegas and its Hold on America, 1947-2000.* New York: Alfred Knopf, 2001.

Doussard, Marc and Sharon Mastracci. "Uncertain Futures: The Real Impact of the High-Tech Boom and Bust on Seattle's IT Workers." Center for Urban Economic Development, September 1, 2003.

Dubofsky, Melvyn. *The State and Labor in Modern America.* Chapel Hill: University of North Carolina Press, 1994.

Early, Steve. "AFL-CIO Convenes Summit on Organizing: Some Call for Direct Action at

NLRB." *Labor Notes*. February 2003.

Eaton, Adrienne and Jill Kriesky. "Union Organizing Under Neutrality and Card Check Agreements." *Industrial and Labor Relations Review*. Vol. 55. no. 1, October 2001, 42-59.

Eckstein, Enid. "Win Unions Today, Change the Rules for Tomorrow." *Dollars and Sense*. No. 225, September/October 1999, 14-15.

Edsall, Thomas. *The New Politics of Inequality*. New York: W.W. Norton, 1984.

Ehrenreich, Barbara and Thomas Geoghegan. "Lighting Labor's Fire." *The Nation*. December 23, 2002, 11-16.

Engardio, Pete, Aaron Bernstein and Manjeet Kripalani. "Is your job next?" *Business Week*. February 3, 2003.

Ewert, Dale. Interview by author. Miami, FL, June 4, 2002.

Fantasia, Rick. *Cultures of Solidarity. Consciousness, Action, and Contemporary American Workers*. Berkeley: University of California Press, 1988.

Farber, Henry and Bruce Western. "Round Up the Usual Suspects: The Decline of Unions in the Private Sector, 1973-1998." Princeton University Industrial Relations Section, Working Paper # 437, April 2000.

Fetonte, Danny. Interview by author. By phone, December 31, 2000.

Fine, Janice. "Community Unionism in Baltimore and Stamford: Beyond the Politics of Particularism." *Working USA*. Vol. 4, no. 3, winter 2000/2001, 59-85.

Fiorito, Jack, Pauk Jarley and Thomas Delaney. "National Union Effectiveness in Organizing: Measures and Influences." *Industrial and Labor Relations Review* Vol. 48, no. 4, July 1995.

Fletcher, Bill. Speech at Labor Notes conference. http://www.labornotes.org/conferences/speeches.html. September 2003 (viewed December 21, 2003).

Fletcher, Bill and Richard Hurd. "Political Will, Local Union Transformation, and the Organizing Imperative." In Nissen, Bruce, ed. 1999, *Which Direction for Organized Labor?* Detroit: Wayne State University Press, 1999, 191-216.

———. "Is Organizing Enough? Race, Gender and Union Culture." *New Labor Forum* No. 6, spring/summer 2000, 59-69.

———. "Beyond the Organizing Model: the Transformation Process in Local Unions." In

Kate Bronfenbrenner, Sheldon Friedman, Richard Hurd, Rudolph Oswald and Ronald Seeber, eds., *Organizing to Win*. Ithaca: Cornell ILR Press, 1998, 37-53.

Foner, Philip. *The Great Labor Uprising of 1877*. New York: Pathfinder, 1977.

Forbath, William. "The Shaping of the American Labor Movement." *Harvard Law Review* Vol. 102, April 1989, 1109-1256.

Freeman, Joshua. *Working-Class New York. Life and Labor since World War II*. New York: New Press, 2000.

Freeman, Richard and Joel Rogers. "A Proposal to American Labor." *The Nation*, http://www.thenation.com/doc.mhtml?i=20020624&s=rogers. June 24, 2002 (viewed December 11, 2003).

Friedman, Sheldon, Richard Hurd, Rudolph Oswald, and Ronald Seeber, eds. *Restoring the Promise of American Labor Law*. Ithaca: Cornell ILR Press, 1994.

Gainsville Sun. May 3, 2001.

Gapasin, Fernando and Howard Wial. "The Role of Central Labor Councils in Union Organizing in the 1990s." In Kate Bronfenbrenner, Sheldon Friedman, Richard Hurd, Rudolph Oswald and Ronald Seeber, eds., *Organizing to Win*. Ithaca: Cornell ILR Press, 1998, 54-68.

Gapasin, Fernando and Michael Yates."Organizing the Unorganized: Will Promises Become Practice?" In Ellen Meiksins Wood, Peter Meiksins and Michael Yates, eds., *Rising from the Ashes? Labor in the Age of "Global Capitalism"* New York: Monthly Review Press, 1998, 73-86.

Brent Garren. "When the Solution is the Problem: NLRB Remedies and Organizing Drives." *Labor Law Journal*. No. 51, 2000, 76-88.

———. "The High Road to Section 7 Rights: The Law of Voluntary Recognition Agreements." Paper presented at the American Bar Association annual conference. San Francisco, August 7-12, 2003.

Geoghegan, Thomas. *Which Side are your on? Trying to be for Labor when it's flat on its back*. New York: Farrar, Strauss and Giroux, 1991.

Goldfield, Michael. *The Decline of Organized Labor in the United States*. Chicago: University of Chicago Press, 1987.

Gooden, Pearl. Interview by author. Tampa, FL, May 30, 2002.

Gordon, David. *Fat and Mean. The Corporate Squeeze of Working Americans and the Myth of managerial "Downsizing."* New York: Free Press, 1996.

Gorman, Karole. Interview by author. Seattle, WA, June 20, 2003.

Gould, William. "Does the National Labor Board Work for Labor?" Interview in *Working USA*. Vol. 4, no. 4, spring 2001, 34-48.

Green, Hardy. *On Strike at Hormel.* Philadelphia: Temple University Press, 1990.

Greenhouse, Steven. "The Most Innovative Figure in Silicon Valley? Maybe This Labor Organizer." *New York Times.* November 14, 1999.

Greer, Simon. "Corporate Counterrevolution, not Union Structure, is the Problem." *New Labor Forum* Vol. 12, issue 3, fall 2003, 80-84.

Griffith, Barbara. *The Crisis of American Labor: Operation Dixie and the Defeat of the CIO.* Philadelphia: Temple University Press, 1988.

Gross, James. *Broken Promise: The Subversion of U.S. Labor Relations Policy, 1947-1994.* Philadelphia: Temple University Press, 1995.

———, ed. *Workers' Rights as Human Rights*. Ithaca: Cornell ILR Press, 2003.

Harrison, Connie. Interview by author. Miami, FL, May 28, 2002.

Hattam, Victoria. *Labor Visions and State Power: The Origins of Business Unionism in the United States.* Princeton: Princeton University Press, 1993.

Hill, Jennifer. Interview by author. Miami, FL, June 4, 2002.

Hirschman, Albert. *Exit, Voice and Loyalty.* Cambridge: Harvard University Press, 1970.

Hoerr, John. *We Can't Eat Prestige. The Women Who Organized Harvard.* Philadelphia: Temple University Press, 1997.

Human Rights Watch. *Unfair Advantage. Workers' Freedom of Association in the United States under International Human Rights Standards.* New York: Human Rights Watch, 2000.

Hurd, Richard. "Contesting the Dinosaur Image: The Labor Movement's Search for a Future." *Labor Studies Journal.* Vol. 22, no. 4, winter 1998, 5-30.

Hurd, Richard and Jospeh Uehlein. "Patterned Responses to Organizing: Case Studies of the Union-Busting Convention." In Sheldon Friedman, Richard Hurd, Rudolph Oswald, and Ronald Seeber, eds., *Restoring the Promise of American Labor Law* Ithaca: Cornell ILR Press, 1994, 61-74.

International Brotherhood of Electrical Workers. "Getting with the Program: Organizing Conference Signals Shift in Focus." http://www.ibew.org/stories/03daily/0310/031021_orgconf.htm. October 21, 2003 (viewed December 3, 2003).

Isaacs, Abram. "Organizing Update." Minnesota Newspaper Guild Typographical Union, TNG-CWA Local 37002, http://www.shoptalk.org/news/organizing.htm (viewed December 3, 2003).

Jobs with Justice. "What is Jobs with Justice?" http://www.jwj.org/AboutJWJ/AboutJWJ.htm (viewed December 8, 2003).

Johnson, Calvin. Interview by author. Tampa, FL, May 30, 2002.

Joseph, Gertha. Interview by author. Miami, FL, May 29, 2002.

Judd, Barbara.. "Organizing High-Tech Permatemps in the Pacific Northwest." Interview. *Working USA*. Vol. 4, no. 3, winter 2000/2001, 100-113.

Katznelson, Ira. *City Trenches: Urban Politics and the Patterning of Class in the United States.* Chicago: University of Chicago Press, 1981.

Kieffer, David. Presentation at Organizing Research Network meeting. Los Angeles, CA, May 18, 2002.

Kim, Carrie. "Victory is Ours!" *UNITE! Magazine.* Vol. 5, no.3, summer 1999, 6-10.

King County Labor Council, Worker Center. *Disparities Within the Digital World: Realities of the New Economy.* 2001.

Kline, Kevin. Interview by author. By phone, August 14, 2003.

Labor Research Review. *An Organizing Model of Unionism.* Chicago: Midwest Center for Labor Research. Vol. X, No. 1, spring 1991.

Lacher, Jeff. "Members as Organizers Build Stronger Unions." *Labor Notes*, http://labornotes.org/archives/2002/11/o.html. November 2002 (viewed December 11, 2003).

Lampros, Andrea. "Organizing Las Vegas." In David Littlejohn, ed., *The Real Las Vegas. Life beyond the Strip.* New York: Oxford University Press, 1999.

Larsen, David. Interview by author. Seattle, WA, June 19, 2003.

Las Vegas Review Journal. April 5, 1984; March 26, 1989; May 6, 1989; November 5, 1989; November 6, 1989; November 7, 1989; June 6, 1993; November 23, 1993; May 27, 1994; July 21, 1995.

Las Vegas Sun. November 3, 1991; August 3, 1993; August 4, 1993; August 6, 1993; January 18, 1994; January 20, 1994; April 7, 1995; July 29, 1995; August 1, 1995; August 2, 1995; August 3, 1995.

Lazarovici, Laurreen. "Bargaining to Organize." *America@Work*. June 2001, 8-11.

Lerner, Stephen. "An Immodest Proposal: A New Architecture for the House of Labor." *New Labor Forum* Vol. 12, issue 2, summer 2003.

———. "No Density, No Power." *New Labor Forum*. Vol. 12, issue 3, fall 2003, 89-94.

Leslie, Douglas. *Labor Law in a Nutshell*. St. Paul: West Publishing, 1992.

Lichtenstein, Nelson. "From Corporatism to Collective Bargaining: Organized Labor and the Eclipse of Social Democracy in the Postwar Era." In Steven Fraser and Gary Gerstle, eds., *The Rise and Fall of the New Deal Order*. Princeton: Princeton University Press, 1989.

———. *Walter Reuther. The Most Dangerous Man in Detroit*.. Chicago: University of Illinois Press, 1995.

———."American Trade Unions and the 'Labor Question': Past and Present." In *What's Next for Organized Labor? The Report of the Century Foundation Task Force on the Future of Unions*. New York: Century Foundation Press, 1999, 57-118.

———. *State of the Union. A Century of American Labor*. Princeton: Princeton University Press, 2002.

Littejohn, David, ed. *The Real Las Vegas. Life Beyond the Strip*. New York: Oxford University Press, 1999.

Los Angeles Times. September 13, 1993; June 4, 1999.

Luce, Stephanie. "Building Political Power and Community Coalitions: The Role of Central Labor Councils in the Living-Wage Movement." In Immanuel Ness and Stuart Eimer, eds., *Central Labor Councils and the Revival of American Unionism*. Armonk: M.E. Sharpe, 2001.

Lukes, Steven. *Essays in Social Theory*. New York: Columbia University Press, 1977.

McAlevey, Jane. "It Takes a Community: Building Unions From the Outside In." *New Labor Forum* Spring 2003, 23-32.

McCammon, Holly. "Disorganizing and Reorganizing Conflict: Outcomes of the State's Legal Regulation of the Strike since the Wagner Act." *Social Forces*. Vol. 72, no. 4, June 1994, 1011-1049.

Mehta, Chirag and Nik Theodore. "Winning Union Representation for Temps: An Analysis of the NLRB's M.B. Sturgis and Jeffboat Division Ruling." *Working USA*. Vol. 4, no. 3, winter 2000/2001, 37-58.

Meiksins, Peter. "Same as it ever was? The Structure of the Working Class." In Ellen

Meiksins Wood, Peter Meiksins and Michael Yates, eds., *Rising from the Ashes? Labor in the Age of "Global Capitalism"* New York: Monthly Review Press, 1998, 28-40.

Metzger, Jack. "Committed to Organizing: An Interview with Richard Bensinger, Director, AFL-CIO Organizing Institute." *Labor Research Review* Vol. X, no. 2, fall/winter 1991/1992, 83-92.

Meyerson, Harold. "A Second Chance: The New AFL-CIO and the Prospective Revival of American Labor." In Jo-Ann Mort, ed., *Not Your Father's Union Movement.* London: Verso, 1998, 1-26

———. "Rolling the Union on." *Dissent.* Winter 2000, 47-55.

Miami Herald. April 20, 2001.

Miami Times. January 16-22, 2002.

Miller, Mike and Michael Eisenscher. "Renewing Labor: A Report from the Field." *Working USA*. Vol. 5, no. 2, fall 2001, 131-154.

Mirtil, Dieuseul, Interview by author. West Palm Beach, FL, June 1, 2002.

Moberg, David. "Can Labor Change?" *Dissent.* Winter 1996, 16-21.

———. "Labor's Capital Strategies." In Jo-Ann Mort, ed., *Not Your Father's Union Movement.* London: Verso, 1998, 201-212.

———. "Temp Slave Revolt." *In These Times,* http://www.inthesetimes.com/moberg2416.html . June 10, 2000 (viewed June 27, 2000).

———. "The Six-Year Itch. John Sweeney sees the AFL-CIO through some Growing Pains." *The Nation.*. Vol. 273, no. 7, September 3/10, 2001, 11-16.

Moody, Kim. *Workers in a Lean World.* London: Verso, 1997.

———. "American Labor: A Movement Again?" In Ellen Meiksins Wood, Peter Meiksins and Michael Yates, eds., *Rising from the Ashes? Labor in the Age of "Global Capitalism"* New York: Monthly Review Press, 1998, 57-72.

———. "Does Size Matter? Strategy and Quality of Leadership Are More Important." *Labor Notes*, http://labornotes.org/archives/2003/02/g.html. February 2003 (viewed December 11, 2003).

Mort, Jo-Ann, ed. *Not Your Father's Union Movement.* London: Verso,1998.

Mt. Sinai-St. Francis Nursing and Rehabilitation Center. "Employer's Objection to Conduct

Affecting the Results of the Election." Case No. 12-RC-8749, before the National Labor Relations Board Region 12. 2002.

———. "Employer's Brief in Support of Objections to Election." Case No. 12-RC-8749, before the National Labor Relations Board Region 12. 2002.

Murphy, George and Peter Ford. "Unit Determinations by the Dotson Board: Whatever the Employer Wants." In AFL-CIO Lawyers Coordinating Committee, *The Labor Law Exchange: The Dotson Board's Decisions 1983-1985*. No. 4, 1985, 17-26.

National Labor Relations Board. "Hearing Officer's Report and Recommendations to the Board on Employer's Objections." Case No. 12-RC-8749, before the National Labor Relations Board Region 12. 2002.

Needleman, Ruth. "Building Relationships for the Long Haul: Unions and Community-Based Groups Working Together to organize Low-wage Workers." In Kate Bronfenbrenner, Sheldon Friedman, Richard Hurd, Rudolph Oswald and Ronald Seeber, eds., *Organizing to Win*. Ithaca: Cornell ILR Press, 1998, 71-86.

Ness, Immanuel. "Organizing Immigrant Communities: UNITE's Workers Center Strategy." In Kate Bronfenbrenner, Sheldon Friedman, Richard Hurd, Rudolph Oswald and Ronald Seeber, eds., *Organizing to Win*. Ithaca: Cornell ILR Press, 1998, 87-101.

Ness, Immanuael and Stuart Eimer, eds. *Central Labor Councils and the Revival of American Unionism*. Armonk: M.E. Sharpe, 2001.

New Unity Partnership. "Multi-Union Growth Partnership." Carpenters for a Democratic Union, http://www.ranknfile.net/nup.htm (viewed December 3, 2003).

Nissen, Bruce. "Utilizing the Membership to Organize the Unorganized." In Kate Bronfenbrenner, Sheldon Friedman, Richard Hurd, Rudolph Oswald and Ronald Seeber, eds., *Organizing to Win*. Ithaca: Cornell ILR Press, 1998, 135-149.

———. *Which Direction for Organized Labor?* Detroit: Wayne State University Press, 1999.

Nissen, Bruce and Seth Rosen. "Community-Based Organizing: Transforming Union Organizing Programs from the Bottom up." In Bruce Nissen, ed., *Which Direction for Organized Labor?* Detroit: Wayne State University Press, 1999, 59-74.

Olney, Peter. "The Arithmetic of Decline and some Proposals for Renewal." *New Labor Forum* No. 10, spring/summer 2002, 7-19.

———. "To Organize to Scale, We Need Labor Law Reform." *Labor Notes*, http://www.labornotes.org/archives/2003/02/f.html. February 2003 (viewed December 11, 2003).

Oppenheim, Lisa. "Women's Ways of Organizing. A Conversation with AFSCME

Organizers Kris Rondeau and Gladys McKenzie." *Labor Research Review* Vol. X, no. 2, fall/winter 1991/1992, 45-59

Orren, Karen. *Belated Feudalism* Cambridge: Cambridge University Press, 1991.

Parker, Mike and Martha Gruelle. *Democracy is Power. Rebuilding Unions from the Bottom Up.* Detroit: Labor Education and Research Project, 1999.

Pavy, Gordon. "Winning NLRB Elections and Establishing Collective Bargaining Relationships." In Sheldon Friedman, Richard Hurd, Rudolph Oswald, and Ronald Seeber, eds., *Restoring the Promise of American Labor Law* Ithaca: Cornell ILR Press, 1994, 110-124.

Piven, Frances Fox and Richard Cloward. *Poor People's Movements. Why they Succeed, How they Fail.* New York: Vintage Books, 1979.

———. *The Breaking of the American Social Compact.* New York: New Press, 1997.

———. "Rulemaking, Rulebreaking and Power." Forthcoming.

Plotke, David. *Building a Democratic Political Order.* Cambridge: Cambridge University Press, 1996.

Pope, James. "Labor's Constitution of Freedom." *Yale Law Journal.* Vol. 106, no. 4, January 1997, 941-1031.

———. "The Thirteenth Amendment and the Right to Strike." *Dollars and Sense.* No. 245, January/February 2003, 8.

Pope, James, Peter Kellman and Ed Bruno. "Toward a New Labor Rights Movement." *Working USA*. Vol. 4, no. 4, spring 2001, 88-33.

Rachleff, Peter. "Is the Strike Dead? An Historical Look at the Future." *New Labor Forum* Vol. 12, issue 2, summer 2003, 87-96.

Ragen, Bill. "The Avondale Shipyard Workers Union Drive: An Anatomy of Labor Organizing in the South." *Working USA*. Vol. 4, no. 3, winter 2000/2001, 114-130.

Ralston Report. December 3, 1993; January 14, 1994.

Rathke, Wade. "Letting More Flowers Bloom under the Setting Sun." In Bruce Nissen, ed., *Which Direction for Organized Labor?* Detroit: Wayne State University Press, 1999, 75-94.

Raynor, Bruce. "Protect Workers' Rights." *Washington Post.* September 1, 2003.

Rogers, Joel. "Reforming U.S. Labor Relations." In Sheldon Friedman, Richard Hurd,

Rudolph Oswald, and Ronald Seeber, eds., *Restoring the Promise of American Labor Law* Ithaca: Cornell ILR Press, 1994, 15-28.

Rosenblum, Jonathan. "Building Organizing Capacity. The King County Labor Council." In Immanuel Ness and Stuart Eimer, eds., *Central Labor Councils and the Revival of American Unionism.* Armonk: M.E. Sharpe, 2001, 163-187.

———. Interview by author. Seattle, WA, June 21, 2003.

Rosenblum, Jonathan and Andrea de Majewski. Memo to Deborah Dion. May 11, 1998.

Hal Rothman, *Neon Metropolis: How Las Vegas Started the Twenty-First Century.* New York: Routledge, 2002.

Rothman, Hal and Mike Davis, eds. *The Grit beneath the Glitter. Tales from the Real Las Vegas.* Berkeley: University of California Press, 2002.

Rothstein, Ed. "A New Vision for Organizing." *Labor Notes,* http://labornotes.org/archives/2003/03/m.html. March 2003 (viewed December 11, 2003).

Russo, Monica. Interview by author. Miami, FL, May 28, 2002.

Schattschneider, E.E. *The Semisovereign People.* Orlando: Holt, Rinehart and Winston, 1975.

Schiffer, Nancy. "Organizing Contingent Workers post-*Sturgis.*" Building and Construction Trades Department, AFL-CIO Attorneys' Conference. May 14-15, 2001.

Sciacchitano, Katherine."Unions, Organizing, and Democracy." *Dissent.* Spring 2000, 75-81.

Scott, James. *Weapons of the Weak*. New Haven: Yale University Press, 1985.

Seattle Post-Intelligencer. December 12, 2000; December 6, 2001.

Seattle Times. December 5, 1997; January 14, 1999; April 3, 1999; June 4, 1999; June 25, 1999; October 27, 1999; January 25, 2000; November 29, 2000; February 2, 2001; February 9, 2001.

Service Employees International Union. *Crisis in Florida Nursing Homes: How Short-Staffing and Underfunding Put Residents and Staff in Danger.* 2000.

———. *SEIU 1199 Florida/Unite for Dignity.* Newsletter. August 2001.

Service Trades Council, Research Department. "An Advisory Report on MGM Grand, Inc. and MGM Grand Hotel & Theme Park." 1994..

Shefter, Martin. *Political Parties and the State: The American Historical Experience.* Princeton: Princeton University Press, 1994.

Shniad, Sid. "Restructuring Won't Happen Top-Down." *Labor Notes*, http://www.labornotes.org/archives/2003/01/m.html. January 2003 (viewed December 11, 2003).

Stone, Katherine Van Wezel. "The Post-War Paradigm in American Labor Law." *Yale Law Journal.* Vol. 90, no. 7, June 1981, 1511-1580.

Story, Alan. "Employer Speech, Union Representation Elections, and the First Amendment." *Berkeley Journal of Employment and Labor Law* Vol. 16, no. 2, 1995, 356-457.

Sweeney, John. Speech to the American Political Science Association. August 30, 2003.

Tampa Tribune. April 25, 2001.

Taylor, D. Interview by author. Las Vegas, NV, October 22, 2002.

Tillman, Ray and Michael Cummings, eds. *The Transformation of U.S. Unions.* Boulder: Lynne Rienner Publishers, 1999.

Tomlins, Christopher. *The State and the Unions: Labor Relations, Law, and the Organized Labor Movement in America, 1880-1960.* Cambridge: Cambridge University Press, 1985.

Turner, Lowell. "Rank-and-File Participation in Organizing at Home and Abroad." In Kate Bronfenbrenner, Sheldon Friedman, Richard Hurd, Rudolph Oswald and Ronald Seeber, eds., *Organizing to Win.* Ithaca: Cornell ILR Press, 1998, 123-134.

Union of Needletrades, Industrial and Textile Employees. "Statement by UNITE President Bruce Raynor on Pillowtex Chapter 11 filing." Press release. July 30, 2003.

Voss, Kim and Rachel Sherman. "Breaking the Iron Law of Oligarchy: Union Revitalization in the American Labor Movement. *American Journal of Sociology.* Vol. 106, no. 2, September 2000, 303-349.

Waldinger, R., C. Erickson, R. Milkman, D. Mitchell, A. Valenzuela, K. Wong and M. Zeitlin. "Helots No More: A Case Study of the Justice for Janitors Campaign in Los Angeles." *Dissent.* Winter 1997, 37-44.

Wall Street Journal. October 27, 1999.

WashTech News, http://wwww.washtech.org. July 17, 1998; October 26, 1999; January 23, 2002.

Waterman, Peter. "Social-movement Unionism: A New Model for a New World order?" *Review* Vol. XVI, no. 3, summer 1993, 245-278.

Weinbaum, Eve. "Organizing Labor in an Era of Contingent Work and Globalization." In

Bruce Nissen, ed., *Which Direction for Organized Labor?* Detroit: Wayne State University Press, 1999, 37-58.

Wilson, Gretchen. Interview by author. New York, NY, June 30, 2003.

Wilson, Gretchen and Mike Blain. "Organizing in the New Economy: The Amazon. com Campaign." *Working USA*.. Vol. 5, no. 2, fall 2001, 32-58.

Wood, Ellen Meiksins. "Labor, Class and State in Global Capitalism." In Ellen Meiksins Wood, Peter Meiksins and Michael Yates, eds., *Rising from the Ashes? Labor in the Age of "Global Capitalism."* New York: Monthly Review Press, 1998, 3-16.

Wood, Ellen Meiksins Peter Meiksins and Michael Yates, eds. *Rising from the Ashes? Labor in the Age of "Global Capitalism."* New York: Monthly Review Press, 1998.

Woodruff, Tom. "New Unity for Labor: Time to Get Started." Counterpunch, http://www.counterpunch.org/woodruff11042003.html. November 4, 2003 (viewed January 30, 2004).

Wrong, Dennis.*Power: Its Forms, Bases and Uses.* New York: Harper Row, 1979.

Wypijewski, Joann. "The New Unity Partnership: A Manifest Destiny for Labor." *Counterpunch*, http://counterpunch.org/jw10062003.html. October 6, 2003 (viewed October 6, 2003).

———. "Wypijewski Replies." *Counterpunch*, http://www.counterpunch.org/woodruff11042003.html. November 4, 2003 (viewed January 30, 2004).